

STATUS CONFERENCE and HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Metcalf Energy Center) 99-AFC-3
(Calpine Corporation and)
Bechtel Enterprises, Inc.))
-----)

MARTIN MURPHY MIDDLE SCHOOL
GYMNASIUM
141 AVENIDA ESPANA
SAN JOSE, CALIFORNIA

THURSDAY, DECEMBER 16, 1999

6:30 p.m.

Reported by:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

William Keese, Chairman, Associate Member

STAFF PRESENT

Stanley Valkosky, Hearing Officer

Paul Richins

Kerry Willis, Staff Counsel

Lisa DeCarlo, Staff Counsel

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Jeffery D. Harris, Attorney,
Chris Ellison, Attorney
Ellison & Schneider
Calpine Corporation/Bechtel Enterprises

Ken Abreu
Calpine

Curt Hildebrand

INTERVENORS

Scott Scholz

Jeffrey Wade

Tim Alton

Mike Boyd, Californians for Renewable Energy, Inc.

Mike Grothus

Mike Murphy

INTERVENORS

Dennis Kennedy, Mayor
City of Morgan Hill

ALSO PRESENT

Elizabeth Cord, Santa Teresa Citizen Action Group

Laurel Prevetti, Principal Planner, Department of
Planning, Building and Code Enforcement, Planning
Service Division, City of San Jose

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1 P R O C E E D I N G S

2 10:05 a.m.

3 PRESIDING MEMBER LAURIE: Ladies and
4 gentlemen, good evening and welcome to a public
5 hearing on the Metcalf Power Project.

6 I'd like to introduce some of the folks
7 in front of you this evening. My name is Robert
8 Laurie. I am a Commissioner at the California
9 Energy Commission. To my left is Mr. Stan
10 Valkosky. Mr. Valkosky is legal counsel in our
11 office, and his title during the course of this
12 proceeding is Hearing Officer.

13 A little bit of description of the way
14 the Energy Commission conducts its proceedings.
15 There are five Energy Commissioners in the State
16 of California. Our offices are in Sacramento.

17 When an application for a power plant
18 comes in a Committee is assigned to hear that
19 case. The Committee to hear this case is myself,
20 as Presiding Member, and the Chairman of the
21 Commission, Bill Keese, is my Associate Member.

22 We will conduct the proceedings. We
23 will then issue a proposed decision sometime in
24 the future to the full Commission. And the full
25 Commission at that time will consider the proposed

1 decision of this Committee and make an ultimate
2 ruling.

3 Now, we very much appreciate and respect
4 the public interest in this application. It is
5 our responsibility and the intention to fulfill
6 that responsibility to recognize and accommodate
7 that public interest.

8 Now, a little bit of explanation about
9 tonight's meeting. This is not -- the hearing
10 tonight is not a hearing, per se, on whether or
11 not this application is a good application or a
12 bad application, or the power plant is a good idea
13 or a bad idea. That is, this is not the
14 evidentiary hearing. And that will occur some
15 months down the road.

16 This is more of a business meeting.
17 Normally these meetings are of much less interest.
18 In light of the general public interest on this
19 plant, we determined not only to come here,
20 because more often than not we hold these kinds of
21 meetings in our offices in Sacramento, but we
22 determined to have it in a facility that could
23 accommodate the interested public.

24 So the business to be taken care of
25 tonight is really process business and I will call

1 upon the Hearing Officer Mr. Valkosky to explain
2 those issues that will be discussed tonight.

3 This is a public meeting and a public
4 hearing on those issues. In order to get through
5 this evening I will need your cooperation. We
6 will call upon the public for comment.

7 I must, however, request that your
8 comments be related to the specific businesses
9 issues at hand, most of which relate to scheduling
10 items, frankly. And this is, again, not the
11 evening when we talk about the environmental
12 impacts, the societal impacts, the economic
13 impacts, and ramifications of this power plant.
14 There will be multiple hearings on those
15 questions. So I will ask for your cooperation and
16 recognize the limitations of tonight's meeting.

17 I would, at this point, ask for
18 introductions of the various parties, and that
19 will include staff, that will include the
20 applicant. It will also include intervenors.

21 Now, let me explain what intervenors
22 are. There will be further explanation by the
23 Public Adviser Ms. Mendonca.

24 There will be, months down the road, as
25 I indicated, an evidentiary hearing. And that's a

1 fairly formalized hearing, and not necessarily
2 like a courtroom, but not unlike a courtroom.
3 That is there will be witnesses that will be
4 sworn, they will be experts in general areas.

5 Intervenors are considered parties to
6 the action. And they may question witnesses, they
7 may cross-examine witnesses, they may call their
8 own witnesses.

9 You need not be an intervenor to be
10 heard. That is when we conduct our evidentiary
11 hearing the public will be invited to offer
12 comment. That comment is part of the record, and
13 is considered by the Commission in its
14 decisionmaking.

15 If one does become an intervenor, one
16 can play an active role, as I indicated, in the
17 questioning of witnesses, et cetera. But there is
18 also a great deal of responsibility that goes
19 along with that.

20 We expect all intervenors to be
21 sufficiently knowledgeable about the rules of
22 intervention so as to abide by the process that
23 the Commission must follow.

24 For tonight, we will offer opportunities
25 for public comment. That will be later in the

1 evening. And your comments will be received and
2 appreciated on the points relevant to tonight's
3 testimony.

4 So let me first ask for introductions.
5 First, let me introduce Mr. Paul Richins, who's
6 the Project Manager for the staff. And Mr.
7 Richins will introduce his staff.

8 Mr. Richins.

9 MR. RICHINS: My name is Paul Richins.
10 I'm the Project Manager for the staff at the
11 California Energy Commission. And I'll let the
12 two legal counsel individuals to my left introduce
13 themselves.

14 MS. WILLIS: I'm Kerri Willis. I'm
15 Staff Counsel at the Energy Commission, and I
16 represent staff as an independent party in this
17 proceeding. And to my right is Lisa DeCarlo, who
18 is also Staff Counsel in our office.

19 HEARING OFFICER VALKOSKY: Thank you.
20 I'd like the applicant to introduce his staff.
21 Mr. Harris.

22 MR. ABREU: I'm Ken Abreu from Calpine,
23 the Development Manager for the Metcalf Energy
24 Center. And to my right is the team that I'd like
25 to have introduce themselves.

1 MR. HARRIS: Hi, my name is Jeff Harris.
2 I'm with the lawfirm of Ellison and Schneider, and
3 we represent Calpine/Bechtel.

4 MR. ELLISON: Chris Ellison, also with
5 Ellison and Schneider.

6 MR. HILDEBRAND: Curt Hildebrand, Vice
7 President, Project Development with Calpine.

8 HEARING OFFICER VALKOSKY: Now, ladies
9 and gentlemen, we can't have that. We appreciate
10 the feelings, but we're not going to have that.
11 Thank you.

12 I'd like the intervenors to introduce
13 themselves, starting on my left.

14 MR. GROTHUS: My name is Mike Grothus.
15 I'm a resident of the area, and a concerned
16 citizen, and intervenor for this process.

17 HEARING OFFICER VALKOSKY: And to my
18 right.

19 MR. SCHOLZ: My name is Scott Scholz.
20 I'm an intervenor and local resident.

21 MR. WADE: My name is Jeff Wade, I'm an
22 intervenor and local resident.

23 MS. CORD: My name is Elizabeth Cord.
24 I'm actually not an intervenor, but I represent
25 the Santa Teresa Citizen Action Group, which

1 represents over 5000 people who have signed
2 petitions in opposition to this project.

3 MR. BOYD: My name is Mike Boyd, and I'm
4 the President of the Board of Directors of
5 Californians for Renewable Energy, Inc. And I'm
6 an intervenor in this project, along with several
7 other projects before the Energy Commission in the
8 state. Thanks.

9 MS. PREVETTI: And I'm Laurel Prevetti
10 with the City of San Jose Planning Department. I
11 am not an intervenor.

12 MR. MURPHY: My name's Mike Murphy. I'm
13 an intervenor, I'm a resident.

14 HEARING OFFICER VALKOSKY: Thank you
15 very much. I'd like to call upon Ms. Roberta
16 Mendonca, who is the Public Adviser. Roberta,
17 where are you? Here she comes.

18 Let me note, ladies and gentlemen, that
19 this meeting is being recorded. There may be a
20 break in the proceedings to accommodate the
21 transcriber. I've also been handed a note that
22 I'm supposed to read. I will not read it
23 verbatim, but I need to advise you that this is a
24 nonsmoking facility.

25 We've also been advised that the school

1 district has a rule that says our meeting must end
2 by 9:30. I've just been handed a note that says
3 if we can help clean up the chairs it can go over
4 to 10:00. We will work on that. And I apologize
5 for that. If we proceed in a timely manner
6 everybody should be able to be heard. We don't
7 intend to rush anybody.

8 Ms. Mendonca.

9 MS. MENDONCA: Good evening. My name is
10 Roberta Mendonca, and I'm the Public Adviser at
11 the California Energy Commission.

12 For those of you who might not know what
13 the Public Adviser does, it's quite a unique
14 position. I am not a part of the applicant's
15 team, and I'm also really not a formal part of the
16 Energy Commission's team.

17 I'm a neutral, independent person who's
18 been appointed to explain the process, the rules
19 of procedure; to give you information on where the
20 project is at any given point in time; and to
21 assist in you understanding what this year-long
22 process might be.

23 I am in Sacramento. I also have an 800
24 number, and an email address, so you can reach me
25 either way. My 800 number is 1-800-822-6228. And

1 my email is pao, which stands for Public Adviser's
2 Office, @energy.state.ca.us.

3 And for those of you who might not have
4 seen it when you first came in, I have a yellow
5 handout on the sign-in table which gives you an
6 overview of the generic year-long process that the
7 siting case for an application for certification
8 goes through, as well as a one-page simple
9 explanation of what this project is proposing to
10 do.

11 I welcome hearing from you, and I am
12 there to, believe it or not, give you a hand in
13 understanding this process.

14 Thank you.

15 HEARING OFFICER VALKOSKY: Thank you,
16 Ms. Mendonca.

17 Ladies and gentlemen, at this point I
18 would like to ask if anybody in the audience has a
19 question on the procedure and purpose of tonight's
20 meeting.

21 At this point I would like to call upon
22 my Hearing Officer, Mr. Stan Valkosky. I will ask
23 Mr. Valkosky to manage this hearing. Mr. Valkosky
24 will talk about the purpose of tonight's meeting
25 and the process to be followed.

1 We want to make sure everybody has an
2 understanding of the reason we're here tonight,
3 and what we intend to accomplish by tonight's
4 meeting.

5 Mr. Valkosky.

6 HEARING OFFICER VALKOSKY: Thank you,
7 Commissioner Laurie.

8 The Committee scheduled tonight's status
9 conference in a notice of November 22, 1999. In
10 that notice we specified four principal reasons
11 for tonight's meeting.

12 The basic purposes are procedural in
13 nature. One, to have applicant, staff and the
14 intervenors discuss the status of discovery.
15 That's the early exchange of information pertinent
16 to the project.

17 We're also going to explore scheduling
18 matters. Applicant and Commission Staff have each
19 proposed various schedules for the next few months
20 of this project.

21 Also want to discuss coordination
22 principally between the Energy Commission Staff
23 and the City of San Jose, as well as with other
24 agencies such as the Bay Area Air Quality
25 Management District and possibly some federal

1 environmental agencies.

2 Then we want to explore, and again this
3 is in a scheduling context, future events,
4 including what we call staff's preliminary
5 assessment, which will be the first independent
6 evaluation of the project.

7 One of the things we want to try to
8 ascertain tonight is when that will be reasonably
9 expected.

10 There are, however -- those were the
11 purposes of the meeting as set forth in the
12 notice -- in the interim, however, we have had
13 several motions filed. Two by intervenors, and
14 one by the applicant.

15 On one intervenor's order we issued a
16 ruling denying that this past Monday. That motion
17 was essentially to have combined an agenda from
18 last night's workshop with today's hearing.

19 Therefore we have two presently pending
20 motions. And we are prepared to discuss them
21 tonight to the extent that the parties are
22 prepared.

23 The first motion is filed jointly by the
24 Californians for Renewable Energy and the Santa
25 Teresa Citizen Action Group. This motion is

1 entitled, a motion to disapprove the application
2 for certification.

3 At this point, Mr. Boyd and/or Ms. Cord,
4 are you prepared to discuss that motion tonight?

5 MR. BOYD: Yes, sir.

6 HEARING OFFICER VALKOSKY: Okay. And,
7 Mr. Harris, are you so prepared?

8 MR. HARRIS: Yes, we are.

9 HEARING OFFICER VALKOSKY: All right,
10 fine, we will discuss that in short order.

11 The next motion is a motion filed by
12 applicant entitled, a motion to set schedule. Mr.
13 Harris, as I read your motion, the substance of it
14 is essentially subsumed by a generalized
15 scheduling discussion. I would propose that we
16 just incorporate that into the scheduling
17 discussion with the understanding that applicant
18 would like its schedule as it proposed. Is that
19 acceptable to you?

20 MR. HARRIS: I think that's a fair
21 reading of things, Stan, yes.

22 HEARING OFFICER VALKOSKY: All right,
23 fine. Lastly, we have a petition to intervene
24 which I just received today. It was filed by the
25 Rancho Santa Teresa Swim and Racquet Club. Do you

1 have a copy of that, Mr. Harris?

2 MR. HARRIS: I don't believe we have a
3 copy, no.

4 HEARING OFFICER VALKOSKY: Okay. I
5 could provide you a copy. And if you could inform
6 me if you have any objections to granting it, we
7 could do that later today, too.

8 MR. HARRIS: We'll be glad to take a
9 look at it and --

10 HEARING OFFICER VALKOSKY: All right,
11 fine. We'll hold that one in abeyance.

12 The procedures we're going to use today.
13 We're going to start off discussing the motion to
14 disapprove the application for certification.

15 The moving parties, that is the
16 Californians for Renewable Energy and the Santa
17 Teresa Citizen Action Group, will be given
18 approximately ten minutes to set forth the basis
19 for their motion. Applicant will then be given
20 another ten minutes to respond to the motion, as
21 will Commission Staff.

22 After that the other individual
23 intervenors will have five minutes to make their
24 feelings known on the motion. The reason they
25 only have five minutes is they have not joined in

1 on the motion and are not technically the moving
2 party.

3 That will be the first order of
4 business.

5 After we have discussed that motion, we
6 will then turn to the noticed purposes of this
7 conference tonight, which were essentially
8 scheduling matters. At that time we will hear
9 from applicant and then staff and then the
10 intervenors in turn about the matters that this
11 conference has been noticed for.

12 Following that, and, Ms. Cord, correct
13 me if I'm wrong, but the Santa Teresa Citizen
14 Action Group has requested an opportunity to make
15 a presentation. Do you still intend to make that
16 presentation?

17 MS. CORD: Yes, we do.

18 HEARING OFFICER VALKOSKY: Approximately
19 how long will that take?

20 MS. CORD: Thirty minutes.

21 HEARING OFFICER VALKOSKY: All right.

22 After that --

23 MR. HARRIS: Stan, can I ask a question?

24 HEARING OFFICER VALKOSKY: I'm sorry, --

25 MR. HARRIS: What that presentation will

1 be? This is the first I've heard of this, so.

2 HEARING OFFICER VALKOSKY: Okay.

3 PRESIDING MEMBER LAURIE: Mr. Harris, at
4 such time as the intervenor seeks to make that
5 presentation inquiry will be made as to the
6 relevancy, and we will comment at that time.

7 MR. HARRIS: Okay, I have no opinion on
8 whether it ought to go forward or not. We just
9 have no idea what it is.

10 HEARING OFFICER VALKOSKY: We are just
11 now trying to get a rough agenda. And following
12 that, the time remaining, we will have opportunity
13 for public comment.

14 Okay, with that, are there any questions
15 as to the general procedure we're going to follow
16 tonight?

17 MR. ELLISON: Stan, I do have just one
18 clarification --

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. ELLISON: -- period that you
21 mentioned, ten minutes, five minutes, that sort of
22 thing.

23 HEARING OFFICER VALKOSKY: Yes.

24 MR. ELLISON: Are those per person, or
25 are those for a total of ten minutes for the

1 moving parties?

2 HEARING OFFICER VALKOSKY: Ten minutes
3 for the moving parties; ten minutes for the
4 applicant to respond.

5 MR. ELLISON: Okay, and then five
6 minutes total for intervenors?

7 HEARING OFFICER VALKOSKY: Five minutes
8 for each of the intervenors, to the extent they
9 wish to respond.

10 Okay, with that, Mr. Boyd and/or Ms.
11 Cord, your motion.

12 MR. BOYD: Okay, basically the motion
13 that we are making does not speak to the merit of
14 the project. It is specifically addressing a
15 procedural issue with the failure of the applicant
16 to respond to data requests from the staff and the
17 intervenors in a timely manner, as specified by
18 the staff.

19 Since the motion was filed the applicant
20 has filed a response to the motion, and this has
21 raised several questions. And I would like to
22 know if it is possible to ask the Commission's
23 attorneys a few questions about the relevance of
24 this to this process.

25 HEARING OFFICER VALKOSKY: At present I

1 would just prefer you present the grounds for your
2 motion.

3 MR. BOYD: Certainly. This is a joint
4 motion by the intervenors, Californians for
5 Renewable Energy represented by myself, Mike Boyd,
6 and Santa Teresa Citizen Action Group represented
7 by Elizabeth Cord here.

8 The motion requests the Energy
9 Commission's disapproval of the application for
10 certification 99-AFC-3. The motion is made
11 pursuant to the California Environmental Quality
12 Act, CEQA, section 15109 which states, I quote:

13 "An agency may disapprove a project
14 application where there is unreasonable delay in
15 meeting requests."

16 Intervenor's contend that the applicant,
17 Metcalf Energy Center, has unreasonably delayed
18 the project and failed to respond to specific
19 written data requests from Energy Commission Staff
20 and intervenors.

21 The Energy Commission is in a position
22 to dismiss MEC for its failure to comply with
23 CEQA's requirements for timely responses to data
24 requests addressing the project and its
25 alternatives.

1 I'd ask people to note the applicant's
2 response to this motion. In their response they
3 do not specifically challenge any of the specific
4 scheduling facts, timelines, or data requests that
5 the staff made. And they did not specifically
6 respond to the facts as we raise them.

7 What they did do is cite the fact that
8 they do not believe that the Commission has
9 relevant legal authority under this section of
10 CEQA to do what we're asking, basically disapprove
11 it.

12 My position is that the Commission's
13 proceedings are supposed to be CEQA-equivalent.
14 If the Commission's proceedings, as covered by the
15 Warren-Alquist Act, do not include the specific
16 sections described in CEQA that I cite, then it's
17 my position that the Commission must fall back to
18 the CEQA requirements, since they don't have that
19 procedure. And therefore, I disagree with the
20 applicant's position that these do not apply.

21 If they don't apply then the
22 Commission's process is not CEQA-equivalent.

23 That's all I have to say. Thank you.

24 HEARING OFFICER VALKOSKY: Okay, thank
25 you, Mr. Boyd. I'd just like to make one

1 technical clarification. Speaking of equivalency,
2 the Commission's process is legally viewed as the
3 equivalent of the environmental impact report
4 process. Preparation of the process for preparing
5 that document.

6 When you're speaking of CEQA
7 equivalency, you're speaking of something
8 different. The Commission, of course, has to
9 follow CEQA. It's one of our operative statutes.

10 MR. BOYD: So CEQA does apply, or --
11 all of CEQA applies, or just the portions that are
12 covered by the Warren-Alquist Act?

13 HEARING OFFICER VALKOSKY: No. All of
14 CEQA does not apply. The procedural sections
15 which deal for the preparation of an EIR,
16 environmental impact report, do not apply to a
17 functionally equivalent process.

18 That is why our documents are somewhat
19 different, the procedures are somewhat different,
20 the timeframes involved are somewhat different.

21 MR. BOYD: Okay.

22 HEARING OFFICER VALKOSKY: Mr. Harris,
23 response?

24 MR. HARRIS: Thank you, Stan. Let me
25 respond both to the facts, as presented in the

1 motion, and also to the law that Mike alluded to.

2 Specifically, on the second page of your
3 petition, labeled as paragraph number three, where
4 you refer to the docket log not having shown a
5 response within the 15 days required. And that's
6 factually incorrect.

7 And the reason that it's factually
8 incorrect, and I checked this again today, it's a
9 good faith error on the part of Mr. Boyd and Ms.
10 Cord. There's nothing malicious in this at all.
11 It's simply a problem with the Commission's
12 webpage.

13 As cited here in this third paragraph
14 they note that the Commission's webpage does not
15 have the 15-day letter that's required in response
16 to the CEC Staff's data request.

17 And knowing that we did file that
18 response I went to the webpage today and was
19 shocked to discover that they're correct on the
20 webpage. The webpage does not list that document.

21 I do, however, have copies of that
22 document, and it is the file stamped endorsed
23 copies from the docket's office at the California
24 Energy Commission.

25 So, you know, like I said, there was

1 nothing malicious in what Liz and Mike assumed
2 about the facts in this case because the webpage
3 is simply wrong.

4 But, Stan, if I could, I'd like to give
5 you copies, file endorsed copies of that document,
6 because I think it's really important to the facts
7 here.

8 As you go down --

9 HEARING OFFICER VALKOSKY: If you could
10 also provide a copy to Mr. Boyd.

11 MR. HARRIS: I have about four copies
12 and I'll let you distribute them, how's that?

13 HEARING OFFICER VALKOSKY: Provide a
14 copy to Mr. Boyd.

15 (Pause.)

16 MR. HARRIS: Liz asked if I'm in charge
17 of the internet for the Commission. And just for
18 the record, I'm not.

19 So I think a lot of this motion is based
20 upon, like I said, a good faith misunderstanding;
21 a reasonable logical conclusion to draw, but
22 factually it's incorrect. You have before you the
23 document.

24 The next four or five paragraphs refer
25 to the lack of having this document. So based on

1 the facts as they are in the record, the motion is
2 incorrect.

3 The other factual issue that I wanted to
4 cover, as well, is that you have before you status
5 report number 4 from Calpine/Bechtel. That status
6 report also has within it basically a table
7 showing the dates of the responses of Calpine/
8 Bechtel to each of the two sets of data requests
9 from the California Energy Commission Staff and
10 from the intervenors, Mr. Wade.

11 That chart shows the date each of those
12 responses were filed. They were filed over a
13 period of several days. They're sets like 1(a),
14 (b) and (c) in a lot of cases. Consistent with
15 our 15-day file here.

16 As you know, the requirement is to
17 object, request additional time, or provide the
18 answer. And the bottomline, I guess, if you look
19 at status report number 4 you'll see for each one
20 of the Commission data requests those have all
21 been answered. They've all been answered in a
22 timely way. Each time we've hit our 15-day
23 letter.

24 So the facts on which the motion is
25 based are simply not correct.

1 On the question of the law involved in
2 this case, Mr. Boyd and Ms. Cord cite section
3 15109. They refer to the CEQA. It's actually the
4 CEQA guidelines.

5 In our response we point out that that
6 particular section is not relevant to the relief
7 they are requesting. And that's the lawyer way of
8 saying it, so let me try this way.

9 The section at issue here deals with
10 projects that may be approved by operation of law.
11 What does operation of law mean? It means
12 approval of a project by doing nothing. The best
13 analogy I can think of, it would be a pocket veto
14 where legislation is basically, by operation of
15 law, becomes effective.

16 That is not the case with the California
17 Energy Commission siting process. There is no way
18 that by operation of law the Commission could
19 approve this power plant. And so the legal basis
20 for the motion is also incorrect.

21 And that is set forth in our brief which
22 we filed and served Mr. Boyd, and Ms. Cord has
23 that document as well, as does the Commission. So
24 based upon, as I said, a good faith
25 misunderstanding of the facts, and based upon the

1 application of the law we would request that the
2 Commission deny the motion.

3 HEARING OFFICER VALKOSKY: Mr. Boyd, do
4 you have any response?

5 MR. BOYD: Yes, I have a few responses.
6 First, my question is, on the document you
7 provided me, why was it not served to the
8 intervenors?

9 MR. HARRIS: It was served on the
10 service list as it existed at that time in this
11 proceeding. So, if you go back, there is a
12 service list for the AFC, and if we have a way of
13 going back and checking what the service list
14 looked like for the Commission on the day this was
15 served, that was the actual service list at that
16 point.

17 MR. BOYD: The list attached here is of
18 the interested parties, not of the intervenors,
19 sir.

20 MR. HARRIS: I think it is actually --
21 well, maybe --

22 MR. BOYD: The reason I raise this is
23 because I never received a copy of this before
24 tonight.

25 MR. HARRIS: Were you an intervenor at

1 that point, Mike?

2 MR. BOYD: Yes, sir.

3 MR. HARRIS: Were you on the service
4 list?

5 PRESIDING MEMBER LAURIE: Gentlemen,
6 gentlemen, you will pass questions through the
7 Chairperson.

8 Mr. Boyd, did you have questions, sir?
9 Or did you have additional comment?

10 MR. BOYD: I just don't agree on the
11 facts, that's all I can say.

12 HEARING OFFICER VALKOSKY: Thank you,
13 sir.

14 MR. BOYD: The other intervenors will
15 have an opportunity, correct?

16 HEARING OFFICER VALKOSKY: Yes, they
17 will, following staff.

18 MR. BOYD: Okay, thank you.

19 HEARING OFFICER VALKOSKY: Okay. Ms.
20 Willis.

21 MS. WILLIS: Thank you. Staff
22 appreciates this opportunity to respond. We'd
23 like to address three basic issues, and I'll try
24 not to duplicate Mr. Harris' discussion.

25 First, though, we did want to discuss

1 the issue of unreasonable delay in response.
2 Energy Commission regulations allow for a 30-day
3 response time, or a date mutually agreed upon by
4 the parties.

5 And at this point staff is satisfied
6 that they have received the data responses that
7 they are expecting to date, which was for set 1
8 and set 2 of our data requests.

9 Mr. Richins will address other discovery
10 issues and status at the time when he updates the
11 Committee. But the requests that have been made,
12 and the responses that are due, have been sent to
13 the Commission.

14 The second point we wanted to make, and
15 Mr. Valkosky touched on that, is the issue of the
16 CEQA guideline section 15087, which dealt with the
17 recirculation of an EIR, or a draft EIR, if
18 there's significant new information.

19 As a certified regulatory program we are
20 not covered under that section. We do not issue
21 an EIR or a draft EIR. As stated earlier, we do a
22 preliminary staff assessment, a PSA, and a final
23 staff assessment, an FSA.

24 And even if we were to follow this, the
25 moving parties analogize the AFC, which is the

1 applicant's application for certification to a
2 draft EIR. And we would never consider that a
3 draft EIR. That is the applicant's information
4 they provide staff. It is not staff independent
5 analysis.

6 Staff will be doing their own
7 independent analysis in their preliminary staff
8 assessment, and that will be open. Mr. Richins
9 will discuss that at the time later on tonight,
10 but we will be offering ample opportunities for
11 public comment on our PSA. And then, the
12 Committee will also be hearing testimony at the
13 evidentiary hearing.

14 Section 10587 does not require public
15 comment in a public hearing. And we will be going
16 way beyond those requirements.

17 The third area I wanted to address is
18 the issue of alternatives analysis. We felt it
19 was indicated in this motion that somehow our
20 alternatives analysis has not been done properly,
21 or done completely.

22 Well, the alternatives analysis in this
23 project has not even been done yet. We had our
24 first workshop last night, and had wonderful
25 public participation and comment. But the

1 analysis is just underway, it has not been done.
2 And there is nothing to indicate that our staff,
3 very competent staff member Gary Walker, will not
4 do a very thorough job in that area.

5 PRESIDING MEMBER LAURIE: Ladies and
6 gentlemen, we have been joined by my Associate on
7 this Committee, Chairman William Keese. Welcome,
8 Chairman Keese.

9 CHAIRMAN KEESE: Thank you.

10 PRESIDING MEMBER LAURIE: Stan.

11 HEARING OFFICER VALKOSKY: Okay, thank
12 you. Now I'd like to take brief responses from
13 the other intervenors on the matter of the motion.
14 Mr. Murphy.

15 MR. MURPHY: Yes, sir. The staff may be
16 satisfied that Calpine and Bechtel met their
17 deadlines in a timely manner, but I am not.

18 A point of order. This may be
19 appropriate or not at this time, you let me know.

20 On the notice for this meeting, as a
21 step to make sure that the public was notified
22 properly, this is on the November 22nd
23 announcement that mentions Baldwin School
24 originally, but it says that the Commission
25 recognizes a high degree of public interest in

1 this project and wishes to publicize Commission
2 events by all reasonable means.

3 Therefore, in this instance, our media
4 office will also circulate a media advisory to
5 local print and electronic media providing notice
6 of the rescheduled event. We cannot, however,
7 insure that local media will carry actual coverage
8 of this matter.

9 I would like to point out that as of
10 yesterday morning, when I submitted a letter to
11 the editor that did get printed this morning, that
12 The Mercury News did not know about the change of
13 the school site. And they were happy to find out
14 by printing my letter to the editor that it would
15 be here.

16 HEARING OFFICER VALKOSKY: Well, all I
17 can say is that our media communications office
18 did, in fact, send out a media advisory --

19 MR. MURPHY: Thank you.

20 HEARING OFFICER VALKOSKY: That's all
21 there is? Okay, --

22 MR. MURPHY: Okay.

23 HEARING OFFICER VALKOSKY: -- sir? And
24 could you identify yourself for the record,
25 please?

1 MR. MURPHY: Oh, certainly, my name's
2 Mike Murphy.

3 HEARING OFFICER VALKOSKY: Thank you.

4 MR. MURPHY: And I did have another
5 point.

6 HEARING OFFICER VALKOSKY: Oh, I'm
7 sorry, go ahead.

8 MR. MURPHY: On procedures. I am not an
9 attorney, Mr. Harris. That's to continue the
10 little joke we were playing in Sacramento Monday
11 when we were talking about the siting process.

12 HEARING OFFICER VALKOSKY: Sir, if you
13 could just keep your comments pointedly.

14 MR. MURPHY: Okay. I was wondering if
15 we could have legal explanations and
16 interpretations made by a CEC lawyer, or at the
17 very least, one to confirm or contradict Mr.
18 Harris' interpretations, since he represents
19 Calpine.

20 HEARING OFFICER VALKOSKY: I believe Ms.
21 Willis indicated she did not believe section 15109
22 was applicable in this case. Is that correct, Ms.
23 Willis?

24 MS. WILLIS: That's correct.

25 MR. MURPHY: Thank you, I didn't hear

1 your identification, so I wasn't aware. Thank
2 you.

3 HEARING OFFICER VALKOSKY: Okay. Next,
4 sir, if you could identify yourself for the
5 record, please, and then make any statement
6 relative to the matter of the motion.

7 MR. GROTHUS: My name is Mike Grothus.
8 I'm an intervenor. And my only comment would be
9 that I was not an official intervenor at the time
10 of this particular original communication, but
11 just again, along the lines of distribution of
12 information, I've not, since I've been on the list
13 of intervenors, received communications from
14 Calpine relative to any of their actions.

15 MR. MURPHY: Nor I.

16 HEARING OFFICER VALKOSKY: Okay. Thank
17 you. Mr. Scholz.

18 MR. SCHOLZ: I'm not sure I have anything
19 on point to the motion, but I was aware that --
20 I've been monitoring the stuff that comes in,
21 because I have been an intervenor since the
22 beginning, and I do vouch that Mike Murphy and
23 Mike Grothus, who have been intervenors for at
24 least a month now, have not received any documents
25 from Calpine.

1 HEARING OFFICER VALKOSKY: Thank you.
2 Mr. Wade.

3 MR. WADE: Regarding the motion before
4 us, I don't have the piece of data that is
5 required to back this up, but I recall that the
6 manager, Lorraine White, had sent out several
7 status reports wherein she complained about the
8 fact that the information was not forthcoming.

9 And so I would support the motion by Mr.
10 Boyd on the basis of that recollection. I wish I
11 could do better.

12 HEARING OFFICER VALKOSKY: Okay, but --

13 MR. SCHOLZ: Excuse me, there's
14 something that's just come to my attention. Item
15 7 of section 2, has a quote -- well, I'll read the
16 whole section. September 3, 1999, staff status
17 report states concerns over delay, -- failure to
18 respond to Energy Commission Staff data requests
19 is further amplified when staff states, quote,
20 "Staff has several concerns about the delay in
21 obtaining responses to its data requests, and the
22 potential for the supplement to constitute a
23 significant change to the AFC." Unquote.

24 And there's more, but this supports the
25 statement, I think, that Mr. Boyd has made, that

1 the data has been delayed. That's all I have to
2 say.

3 We'll talk more about data requests in
4 our presentation.

5 HEARING OFFICER VALKOSKY: Okay, fine.
6 Mr. Boyd, I just have a couple of questions, again
7 to assist the Committee's understanding.

8 To my understanding, based on the
9 statements of both Calpine and Commission Staff,
10 they have indicated that the data responses have
11 either been submitted, or that they will be
12 submitted in the future.

13 Do you have any fundamental disagreement
14 with that?

15 MR. BOYD: Yes, I do. I do not agree.
16 And I think I have provided you some factual
17 evidence from staff reports, and from the minutes
18 of the previous hearing that you had here, that
19 demonstrate that that is not the case.

20 HEARING OFFICER VALKOSKY: Well, again,
21 and I don't wish to argue the point with you, but
22 I'm referring to staff's December 6th status
23 report which in items 2 and 3 say that data
24 responses were completed within the last week or
25 two.

1 MR. BOYD: Within the last week or two?

2 HEARING OFFICER VALKOSKY: Yes.

3 MR. BOYD: As it's stated in --

4 HEARING OFFICER VALKOSKY: Specifically
5 November 29th and December 3rd. And, again, do
6 you have any disagreement with that --

7 MR. BOYD: Yes, I do, and to be
8 specific, on July 23rd they received a letter that
9 stated, written response to the enclosed data
10 requests are due to the Energy Commission Staff on
11 or before August 23rd, or later mutually agreed
12 upon date. If you are unable to provide the
13 information requested, need additional time to
14 provide the information, or object to providing
15 it, you must send a written notice to both
16 Commissioner Laurie and to me --

17 HEARING OFFICER VALKOSKY: Right, yes.

18 MR. BOYD: -- within 15 days.

19 HEARING OFFICER VALKOSKY: Yes.

20 MR. BOYD: And I have received no
21 evidence beyond what I received from the applicant
22 today that that took place.

23 HEARING OFFICER VALKOSKY: Okay, Mr.
24 Harris, are you typically including Mr. Boyd and
25 the other intervenors on your proof of service

1 list? And are you, in fact, proofing your data
2 responses?

3 MR. HARRIS: Yes, on both accounts.
4 And, you know, I don't have the service list from
5 that date. We'll check that issue.

6 I guess, you know, one of the salient
7 points here to point out is that the staff was
8 obviously well aware of this, as well, and I would
9 again direct your attention to the table in you
10 status report number 4 --

11 HEARING OFFICER VALKOSKY: I understand
12 your table. My concern is that you're using what
13 is the most recent proof of service list. To my
14 knowledge that is the proof of service list
15 revised on November 16, 1999.

16 MR. HARRIS: Yes.

17 HEARING OFFICER VALKOSKY: Okay, fine.

18 MR. HARRIS: The last thing we filed was
19 the motion, response to the motion --

20 HEARING OFFICER VALKOSKY: That's okay,
21 we'll move off that then.

22 Mr. Boyd, we're going to move off that
23 point right now.

24 MR. BOYD: Okay.

25 HEARING OFFICER VALKOSKY: The next

1 question I have is underlying the grounds for your
2 motion seems to be a belief that the public
3 wouldn't have sufficient time to review the
4 project.

5 If the schedule is, in fact, extended,
6 thereby providing more public review time, where,
7 in fact, would there be any prejudice to the
8 public?

9 MR. BOYD: If the applicant does not
10 have a specific project proposed, there is no
11 benefit. And as I've seen the process so far, I
12 think we're entertaining our third amendment, or
13 proposed project, at this time.

14 So it's very difficult for the public to
15 respond when you have a moving target.

16 HEARING OFFICER VALKOSKY: Okay, thank
17 you. Move off that.

18 Your last point, you raise a certain
19 inference about appeals by a former intervenor in
20 another case. Are you aware that those appeals
21 have been denied by the Environmental Protection
22 Agency and by the California Supreme Court?

23 MR. BOYD: Yes, I am aware of that. I
24 was not aware of it at the time.

25 HEARING OFFICER VALKOSKY: Okay, I just

1 wanted to make sure that you knew.

2 Okay, thank you, the Committee will take
3 this matter under submission, and after
4 considering the arguments set forth tonight, will,
5 in the future, issue a written ruling.

6 MR. BOYD: Thank you.

7 HEARING OFFICER VALKOSKY: All right,
8 the next order of business is a discussion of the
9 materials contained in the recent fourth status
10 reports. We've only had them filed by applicant
11 and by staff. Largely deal with scheduling and
12 informational matters.

13 Mr. Harris, could you please summarize
14 applicant's latest status report?

15 MR. HARRIS: I'm sorry, Stan, the latest
16 status report?

17 HEARING OFFICER VALKOSKY: Yes.

18 MR. HARRIS: In response to the four
19 questions in the notice, Stan?

20 HEARING OFFICER VALKOSKY: I'm sorry,
21 Mr. Harris. I was distracted. At this point I'd
22 like to address the major purposes for tonight's
23 conference, which were to address the status of
24 discovery, scheduling matters, coordination with
25 the City of San Jose, future events, et cetera.

1 Mr. Harris, proceed.

2 MR. HARRIS: Okay, we'll deal with the
3 four issues in the notice of the status
4 conference. And if it's appropriate, Stan, we'll
5 deal with especially the third and the forth
6 points in talking about some of the issues that
7 are in our motion.

8 So, let me provide a bit of a framework
9 for where we are. And just spend a little time
10 talking about the status of Calpine/Bechtel's
11 responses to data requests.

12 The first specific question you asked
13 was the status of that discovery. As indicated,
14 we've completed all the CEC data requests to this
15 point, that's confirmed both by our status report
16 and the Commission's. So we're making good
17 progress there.

18 We just received a third and fourth sets
19 of staff data requests. I think coming up on the
20 20th is when the 15-day letter is due on the third
21 set. And then actually Christmas Day, by the 15
22 days, would be the status number 4. So we may
23 file that either before or the next day after. I
24 don't think you'll accept it on Christmas Day.

25 In sum, we're meeting our obligations,

1 pursuant to the regulations. And we have, in
2 every case, met those deadlines.

3 The second, third and fourth questions
4 presented have to deal with coordination with
5 other agencies, a proposed date for the release of
6 the preliminary staff assessment, and a discussion
7 of the process and specifically how we integrate
8 our proposed schedule with that process that's
9 being proposed by the City of San Jose and the
10 land use entitlements arena.

11 So we have proposed a full schedule for
12 your consideration that's attached to the filing
13 that we filed and served on the right list, I
14 know, this time. So that's before you.

15 That proposed schedule provides really a
16 complete and clear picture of how this proceeding
17 is going to go, all the way through the decision
18 on licensing.

19 So, I think that's a real important
20 point. We want to lay every milestone out there
21 between now and the time that this Commission
22 actually does act on this application.

23 We've described the schedule that we've
24 put together as both aggressive and realistic.
25 And let me elaborate a little bit on both of those

1 points.

2 By being an aggressive schedule, what we
3 mean is that that schedule is going to require
4 everyone to rededicate themselves to a detailed
5 and thorough and thoughtful analysis of the real
6 issues associated with this project.

7 As a realistic schedule we propose a
8 schedule that meets all the legal requirements and
9 provides plenty of opportunity for public review
10 and comment, meets all the applicable laws, and
11 also provides all the required times for the
12 public to have their input into this process.

13 The schedule we proposed and filed with
14 the Commission only differs by a few weeks from
15 the schedule that staff has proposed. So, on
16 order of magnitude here, we're talking about a
17 decision in November of the year 2000. Staff's
18 schedule would be December or January, December of
19 2000, January of 2001. So at the worst case I
20 think we're talking about six to eight weeks
21 difference.

22 And so although we had proposed an
23 individual schedule, one we think that meets the
24 requirements that we're faced with, the bottomline
25 is it does not vary greatly at all from the

1 staff's in terms of the final date. And that
2 really is the important date.

3 If you asked us to isolate on our
4 proposed schedule, you know, one milestone that is
5 the most important to Calpine/Bechtel, it would be
6 that November 2000 decision date. And the rest of
7 the dates kind of flow from that desire.

8 We've removed really from the schedule
9 anything that we consider to be contingencies.
10 There was time built into that schedule for events
11 that right now are unknown, and really unknowable.
12 And what we've gone through and took the staff
13 schedule, we took the original schedule, we put
14 our schedule, put all three of them into a column
15 and tried to figure out where we thought we could
16 cut time.

17 And in the interest of making sure
18 people understood where we were trying to cut
19 time, we ultimately filed something that has the
20 Commission's proposed schedule in one column, and
21 ours right next to it, so you can readily compare
22 those. And those are available in the back of the
23 room, although I don't know if there's still
24 copies back there.

25 The schedule represents, really, I

1 think, the best estimate of how much time it's
2 going to take to get through this proceeding. And
3 given the public interest in this proceeding, we
4 think the schedule also has the important value of
5 being one that's realistic, and one that gives
6 this Committee the greatest control over where
7 we're going to end up.

8 There will always be potential to
9 accelerate this schedule in terms of releasing a
10 PSA or an FSA. There won't be a Committee ability
11 to accelerate this schedule as it relates to
12 things like evidentiary hearings. I think it's a
13 pretty safe bet that once we have a date
14 established for evidentiary hearings, the
15 intervenors are going to hold the Committee's feet
16 to the fire.

17 So, even if we were able to complete
18 tasks early, I think it would be impossible to
19 move those evidentiary hearing dates up over the
20 objections of the intervenors. And so with that
21 as kind of a baseline, we've established a
22 schedule that is really realistic, and vest the
23 Committee with considerable control, actual
24 ultimate control, over the outcome here.

25 It's important to note, too, that the

1 schedule that we have proposed will result in
2 about an 18-month siting process. The statute
3 provides for 12 months. And the applicant has the
4 right to not waive that 12 months.

5 Essentially what we're doing tonight is
6 saying with this proposal for November of 2000,
7 that this will be an 18-month siting process, and
8 that's an important note. Because applicants, in
9 the past, have come to the Commission and been
10 outright reluctant and completely recalcitrant,
11 and said, you know, we will not slip our one-year
12 schedule. And what we've filed, with an 18-month
13 schedule, is a concession that we will not try to
14 enforce our legal right to have a decision in 12
15 months. And so I want that point to be something
16 that weighs into the discussion here.

17 A second real important feature of the
18 schedule we put is it does dovetail nicely with
19 the city's process. And as the Commission knows,
20 you've been struggling with how do we deal with
21 local land use issues, and how do we dovetail that
22 process into the Commission process.

23 And it's becoming a bigger issue with
24 siting projects. And what we've put together is a
25 proposal that is closely coordinated with the City

1 of San Jose's own schedule, and let me emphasize
2 that, San Jose's schedule for reviewing this
3 project. It has nothing to do with San Jose's
4 decision on the merits. We've been trying to get
5 the procedures in place.

6 And this schedule fits with the timeline
7 that's been expressed by the City of San Jose,
8 specifically that City action on the project would
9 likely occur in August of 2000.

10 And that really was an anchor in the
11 schedule we put together. One of the -- probably
12 the second most important date in figuring out how
13 to put this proceeding together. You know, the
14 November 2000 end date and the City's desire to
15 see an action on this in August of 2000. That's
16 reflected in our schedule.

17 Calpine/Bechtel has also taken a
18 proactive approach to dealing with the question of
19 the riparian corridor along Fisher Creek. The
20 City has a policy for a 100-foot riparian corridor
21 setback.

22 The project, as proposed by Calpine/
23 Bechtel, we always maintained that we fit within
24 that policy, and within the exceptions to that
25 policy. And specifically there were three

1 exceptions to that policy that we felt applied
2 directly to this project.

3 We met with the City and they expressed
4 a different opinion. So what have we done?
5 Calpine/Bechtel has gone back to take a look at
6 the site arrangement, and in order to meet the
7 requirements of that 100-foot riparian corridor,
8 have significantly compressed the project.

9 And that's exactly like it sounds.
10 Things have been moved closer together, things
11 have been moved away from the creek. And with the
12 proposed arrangement we will be able to completely
13 avoid that 100-foot riparian corridor setback.

14 And that's been done at considerable
15 expense to the construction costs associated with
16 the project. And also with maintenance
17 complexity, because there are issues related to
18 the ongoing maintenance of the project that will
19 be a lot more complex to do this.

20 But we've come up with a design that
21 meets all those policies. Again, we felt we met
22 policies to start with, and we'll be submitting
23 that information on or before February 15th for
24 the Commission's decision.

25 I want to emphasize that it's important

1 to note that rather than waiting for the
2 preliminary staff assessment to come out, which
3 would have been out on December 7th, and then
4 moving forward with these proactive changes,
5 Calpine/Bechtel went to the Commission Staff, went
6 to the City Staff, talked with them about these
7 issues, and has decided not to waste their time,
8 not to waste the CEC Staff's time, and ask for a
9 PSA that would not reflect a project that's going
10 to make everybody happy in terms of the riparian
11 corridor.

12 So that proactive approach came with a
13 price. We waived our right to receive the
14 preliminary staff assessment on the date that it
15 could have been released by the original schedule.

16 We've also been taking a proactive
17 approach with the community in terms of what this
18 project will look like. And there's a term called
19 visual treatment, meaning what will the project
20 look like, and how will it integrate with the
21 surrounding community.

22 Based on recommendations we received
23 from the City, from members of the public, from
24 the Commission Staff, we've agreed to remove the
25 uppermost 50 feet of that visual screening. Think

1 of it simply in terms of a screen to make the
2 project blend in with the hillside.

3 The City felt that that uppermost 50
4 feet of the visual screening was not intrinsic to
5 the project, as that term is used in City
6 regulations. We also heard from several folks
7 that they thought the project looked too bulky.
8 So we've got questions with intrinsic-ness and
9 bulkiness. Kind of general and vague.

10 But in response to that, the solution
11 that has been crafted is to take the uppermost 50
12 feet of that project and remove that.

13 Removing that uppermost 50 feet has some
14 very positive air quality about modeling effects.
15 Specifically by removing that uppermost 50 feet of
16 the visual screening we're going to be able to use
17 a more conventional air modeling. This is the
18 same modeling protocol that has been used on I
19 think virtually every project that the Commission
20 has reviewed and approved in the past.

21 And so, in that sense, in addition to
22 dealing with requests from the community about how
23 the project looks, we also have an opportunity
24 here for, I think, a more accelerated and
25 simplified review of the air quality impacts

1 associated with the project.

2 Calpine/Bechtel's approach to these
3 issues has been to be proactive. And by
4 proactive, meeting with community members, meeting
5 with interested folks, meeting with people
6 individually when they'd like that, making
7 presentations to groups, trying to find out what
8 people's opinions are about the project.

9 And I think we've dealt with people very
10 forthright about the issues. We've made some
11 suggested mitigation that really is going to
12 address the issues that have been raised by the
13 community and by the City, and really offer us an
14 opportunity to have a project here that is
15 superior and a very proactive approach, as well.

16 That, in a general sense, Stan, outlines
17 the issues that are set forth in our motion and in
18 our proposed schedule.

19 I did want to make a comment, if I
20 could, as well, though, Stan. I wanted to let you
21 know that I bought a t-shirt, one of the blue t-
22 shirts, and --

23 (Applause.)

24 MR. HARRIS: Thanks. And, for the
25 record, I know they're free, but I paid the full

1 suggested donation of \$10, so I have it. A light
2 blue. I think every school I went to had blue in
3 it.

4 But that's not really the reason I did
5 it. I think it's an interesting thing. Really,
6 what you've done with those shirts is frame the
7 issue for us here.

8 We have no longer a one-year process, we
9 now have an 18-month process at least, to take a
10 look at this project. And the question you've all
11 asked is -- or I guess the statement you've made,
12 I can't read it, can you stand up -- it says no
13 urban power plants.

14 (Applause.)

15 MR. HARRIS: You'll notice I'm not
16 wearing mine --

17 HEARING OFFICER VALKOSKY: Mr. Harris,
18 Mr. Harris, --

19 MR. HARRIS: Let me --

20 HEARING OFFICER VALKOSKY: No, no, --

21 MR. HARRIS: -- I'll just finish --

22 PRESIDING MEMBER LAURIE: Hold your
23 statement, please.

24 MR. HARRIS: Okay.

25 PRESIDING MEMBER LAURIE: I've asked the

1 audience to cooperate. I'm certainly going to ask
2 you, as a party, to cooperate. We're trying to
3 conduct this meeting in a businesslike fashion.
4 Please do so.

5 MR. HARRIS: Just let me finish. I'll
6 finish up. There is a point to this, I'm sorry,
7 but it's hard to get to. And that point was
8 simply this, that we're looking at a 12-month to
9 an 18-month process now. And the purpose of that
10 process is to deal with this power plant.

11 And rather than debate folks on what
12 does it mean to have an urban power plant, I think
13 what we're looking to do is sit down and talk with
14 people about what your concerns are about that
15 term. What is it about an urban power plant, as
16 you've described it, again not debating whether
17 this is one or not, what is it that concerns you.
18 What are the factual issues.

19 Let's talk about what your concerns are.
20 Let's do it in a way that's respectful and open,
21 and let's do it in a way that gives us all the
22 opportunity to deal with the facts here. And
23 we're dedicated to working with you to address the
24 concerns that gave rise to those shirts, and
25 trying to figure out what your concerns are.

1 And that's really the point that I was
2 trying to make, Commissioner, is that we are
3 dedicated to trying to figure out what lies behind
4 the interests of the community here.

5 HEARING OFFICER VALKOSKY: Okay, Mr.
6 Harris, I just have a couple of questions and an
7 observation.

8 On your proposed schedule you indicate
9 that you would prefer that staff split its
10 preliminary assessment into at least two parts.
11 Could you explain to me the rationale for that
12 proposal?

13 MR. HARRIS: Yes, Stan. The schedule is
14 driven by the information that will be released on
15 or before February 15th. That's an important day
16 because that will provide additional information
17 on air quality issues and biological issues and
18 some of the other issues related to the visual
19 impacts.

20 Going forward from that date will be a
21 submission to the Bay Area Air Quality Management
22 District. That will require their review
23 approximately 45 to 60 days which takes you to the
24 next deadline of the preliminary determination of
25 compliance on the 7th, and then additional 45 to

1 60 days after that for the FDOC.

2 So, really driven by the Bay Area
3 District review.

4 MR. ELLISON: Stan, if I could just add
5 one comment to that.

6 HEARING OFFICER VALKOSKY: Please, Mr.
7 Ellison.

8 MR. ELLISON: The basic reason we're
9 proposing to split the PSA into two parts is that
10 we're simply saying that for those technical areas
11 where the information will be complete and ready
12 for public review, it should be released as early
13 as possible to maximize the public review.

14 And to combine them all into one
15 document provides only the benefit of having a
16 single cover, but carries with it the detriment
17 that all the technical areas have to wait for the
18 last one to be available.

19 And so we don't want to split it into
20 more than -- you know, into too many pieces, but
21 we think that for those areas we think there's a
22 significant number of technical areas where
23 preliminary staff assessment can be made available
24 earlier in the process, thereby providing more
25 public review, and that's what we support.

1 HEARING OFFICER VALKOSKY: Okay, I'd
2 just like staff to address that point specifically
3 when we get to staff.

4 Next, Mr. Harris, and my observation is
5 I don't think we agree whether or not 27 days for
6 the Committee to prepare a proposed decision is
7 reasonable. I think you can imagine what my
8 response to that is.

9 But, more importantly, you are aware
10 that there is a minimum 30-day public review
11 period for a Presiding Member's Proposed Decision,
12 are you not?

13 MR. HARRIS: Yes.

14 HEARING OFFICER VALKOSKY: Okay, do you
15 think the public would be entitled to more than
16 that in this case?

17 MR. HARRIS: Well, you're talking about
18 the basic legal requirement, or --

19 HEARING OFFICER VALKOSKY: I'm talking
20 about do you think, in view of the public
21 participation, do you think that the Committee
22 should set longer than a 30-day review period for
23 its proposed decision.

24 MR. HARRIS: We put this schedule
25 together on the basis of where we think we're

1 going to end up. If we end up with a good project
2 at that point, 30 days may be enough.

3 HEARING OFFICER VALKOSKY: That's not a
4 direct answer. I'm aware of that.

5 Okay, I also note from your schedule
6 that even given a minimum 30-day review period
7 there is precisely no time for the Committee to
8 prepare a revised Presiding Member's Proposed
9 Decision.

10 These are observations on the schedule.

11 MR. ELLISON: Mr Valkosky, if I could
12 comment on those. When we described the schedule
13 a moment ago as being realistic but aggressive, I
14 think Mr. Harris correctly said that what we had
15 done on the one hand is to agree to waive the 12
16 months and extend the schedule to allow us to make
17 changes in response to public comment, which we're
18 doing. And at the same time to allow the full
19 opportunity to respond to those things.

20 At the same time in doing that, for
21 those areas of the schedule which are optional,
22 when you set the schedule today our recommendation
23 is that you set an aggressive schedule.

24 And the reason that we recommend that is
25 because you always have the option later to extend

1 it. If you decide that you need a revised PMPD
2 you can always do that. If you decide that you
3 need more than 30 days review of the PMPD, you can
4 always do that.

5 But if you don't set the aggressive
6 schedule now, you can't come back and make it more
7 aggressive later if it turns out that the 30 days
8 is sufficient time, or that there isn't a need for
9 a revised PMPD.

10 So that's the reason that we recommended
11 the schedule that we did.

12 HEARING OFFICER VALKOSKY: Thank you,
13 Mr. Ellison. I was responding more in reflection
14 of Mr. Harris' comments that the November date was
15 extremely important. I'm just indicating that at
16 this time that would be viewed as tentative or
17 hopeful or something less than certain at this
18 time. That's the purpose of it, get it out on the
19 record now.

20 Do you have anything else?

21 MR. HARRIS: No.

22 HEARING OFFICER VALKOSKY: Okay. Ms.
23 Willis.

24 PRESIDING MEMBER LAURIE: Mr. Valkosky,
25 before we proceed, ladies and gentlemen, I'd like

1 to announce the attendance of an additional
2 intervenor, the City of Morgan Hill is an
3 intervenor and representing the City this evening
4 is its Mayor Dennis Kennedy. Welcome, Mr.
5 Kennedy.

6 (Applause.)

7 HEARING OFFICER VALKOSKY: Thank you.
8 Ms. Willis.

9 MS. WILLIS: Thank you. I'd like to
10 turn this over to Mr. Richins.

11 MR. RICHINS: I want to thank the
12 Committee for allowing us to present our position
13 as it relates to the proposed schedule. I think
14 significantly there's some fundamental differences
15 between the applicant's proposed schedule and that
16 which is suggested by staff of the Energy
17 Commission.

18 In developing the schedule we held
19 numerous phone calls with the City of San Jose and
20 with the applicant. And based on those phone
21 calls, put together a schedule that we think is
22 reasonable and allows ample time and an
23 appropriate amount of time for public
24 participation and public comment during the course
25 of staff's portion of the proceedings.

1 We did not propose anything beyond the
2 final staff assessment other than what's the norm,
3 so we leave that up to the Committee to decide,
4 and do not have any suggestions or recommendations
5 on that account.

6 The major differences between the
7 applicant's proposed schedule and what we would
8 propose, I note that the applicant has proposed a
9 bifurcated or a multipart preliminary staff
10 assessment that would be released in stages to the
11 public.

12 We do not recommend that that be done
13 for a variety of reasons. One reason is that
14 there is a tremendous amount of public interest in
15 this particular project, as evidenced by the
16 public participation tonight.

17 There are many difficult and complex
18 issues associated with the project, and we feel
19 that it's more important to have a single document
20 so that there is less confusion on the part of the
21 intervenors and the public when they're reviewing
22 and trying to understand the exact position of
23 staff on the various issues.

24 So that's one major difference. Also,
25 in the applicant's schedule they indicate that the

1 supplement will be filed, the new supplement, what
2 we're calling supplement C, on February 15th, and
3 indicate that the only areas that would be
4 affected by that are air quality, public health
5 and biology.

6 Since we haven't seen it we really can't
7 comment on exactly all the technical areas that
8 might be impacted, but just a quick review of what
9 I think might be coming in would impact
10 potentially eight areas.

11 That would be air quality, public
12 health, biology, water, geology, land use, visual
13 and potentially facility design. So the two-part
14 PSA would have to be expanded, I think, from the
15 three technical areas to at least eight, if that
16 was the desire of the Committee. But we would not
17 recommend that. We would recommend a single
18 document.

19 Also in the applicant's schedule there
20 does not seem to be adequate time for discovery
21 after the filing of the supplement C on February
22 15th for the Energy Commission Staff nor the
23 intervenors to provide or ask data requests that
24 might result from the additional filing.

25 I'd just like quickly to go through the

1 schedule. In the filing that we made on December
2 6th, I'd just like to highlight some dates that we
3 think are important.

4 Starting with the supplement C filing,
5 we indicated we thought that it would come in on
6 February 1st. We learned recently that it won't
7 come in until the 15th of February.

8 That being the case, the dates that I
9 indicated in the filing on December 6th, would
10 need to be slipped possibly by 15 days, about two
11 weeks.

12 Based on that the Air District. it's my
13 understanding, needs 45 to 60 days in which to
14 review and provide us with a preliminary
15 determination of compliance. The applicant has, I
16 think, 45 days, and that may be cutting it fairly
17 tight for the Air District. In our conversations
18 with the Air District they indicate about 45 to 60
19 days.

20 Based on that we would suggest that the
21 preliminary staff assessment be issued around
22 April 24th, with workshops to be held during May
23 and June. And then we would receive the Air
24 District final determination in June, with the
25 final staff assessment to be filed in July.

1 Normally we ask for about eight weeks
2 between the preliminary staff assessment and the
3 final staff assessment, however because of the
4 issues involved in this case, the amount of public
5 participation, the number of intervenors and the
6 number of workshops that we anticipate, we are
7 suggesting that instead of having eight weeks in
8 which to produce the final staff assessment, that
9 we've asked for a couple of more weeks so that
10 that would be 10 to 12 weeks rather than eight
11 weeks.

12 Then there is one issue that I did not
13 include in my filing, and that was the
14 certification of the document. I know that the
15 City of San Jose will be utilizing the staff's
16 final staff assessment on which to make decisions
17 as it relates to their land use entitlements. And
18 they have requested that the document that they
19 use be certified by the Energy Commission.

20 So, I'm not sure of the procedures or
21 process the Energy Commission would go through,
22 but there would need to be some type of noticing
23 requirement, I would imagine, and some type of
24 public hearing in which to certify the document.
25 And that would have to happen prior to the city

1 planning commission and prior to the city council
2 meeting and making any decisions as it relates to
3 the document and their land use entitlements.

4 Laura Prevetti is sitting next to me,
5 with the City of San Jose, and she also would like
6 to make some comments as it relates to the
7 schedule when it's her turn.

8 And then the rest of the schedule I
9 leave up to the Commissioners and the Committee as
10 it relates to when hearings will be held, and when
11 the PMPD would come out, and then the final
12 decision.

13 Thank you.

14 HEARING OFFICER VALKOSKY: Just a couple
15 of questions, Mr. Richins. Is the United States
16 Fish and Wildlife Service going to be involved in
17 a biological evaluation of the site?

18 MR. RICHINS: We have held some meetings
19 with them initially, and I believe the applicant
20 has, as well. I don't know if there's been a
21 determination made as yet. I think that would be
22 a fair question to ask the applicant, as well.

23 HEARING OFFICER VALKOSKY: Okay, I'm
24 going to go out of order here. Mr. Harris, could
25 you answer that question?

1 MR. HARRIS: Yes, Stan, Paul's right.
2 We have had some initial meetings with the Fish
3 and Wildlife Service. In fact, they had a
4 biological workshop down in Coyote Valley that was
5 attended.

6 Our consultants are working with the
7 Fish and Wildlife Service. The schedule that we
8 propose anticipates that they will be making a
9 decision in February as to whether a formal
10 consultation is required, and if so, what the
11 scope of that formal consultation would be.

12 So, --

13 HEARING OFFICER VALKOSKY: If a formal
14 consultation is required, how long does that
15 process take?

16 MR. HARRIS: It's 135 days.

17 HEARING OFFICER VALKOSKY: Thank you.

18 Mr. Richins, what actions by other
19 agencies must take place before staff issues its
20 preliminary staff assessment?

21 MR. RICHINS: Some major milestones that
22 we need is, as we've touched on here, is for the
23 preliminary staff assessment we'd need the
24 preliminary determination of compliance from the
25 Air District.

1 We would need the supplement C that
2 would describe from the applicant the different
3 changes that are being proposed. We would need
4 adequate time for discovery to review and ask data
5 requests on that.

6 We would need information from the
7 CalISO on the transmission system engineering. I
8 know that they're doing -- PG&E is re-doing some
9 analysis on the transmission line system --

10 HEARING OFFICER VALKOSKY: Excuse me,
11 information or determination?

12 MR. RICHINS: PG&E right now is doing
13 additional studies, and then what we need from the
14 CalISO is a determination.

15 HEARING OFFICER VALKOSKY: Okay, so that
16 is before you could issue the preliminary staff
17 assessment. How about the final staff assessment?

18 MR. RICHINS: On the final staff
19 assessment we would need the final determination
20 of compliance, and we would also need what you
21 already alluded to as information pertaining to
22 the biological opinion, whether there was a formal
23 or an informal consultation.

24 We would not necessarily need to have
25 the final determination from U.S. Fish and

1 Wildlife Service, but we would have to have some
2 confidence in knowing what that document would
3 contain. But we would need it prior to
4 evidentiary hearings.

5 HEARING OFFICER VALKOSKY: Okay, thank
6 you. At this time I'd also like you -- and, Ms.
7 Prevetti, jump in to the extent it affects the
8 City, as well -- but I'd like an explanation of
9 the status of the memorandum of understanding
10 between Commission Staff and the City of San Jose.

11 MS. PREVETTI: Thank you, Commissioner.
12 We are essentially awaiting the results of this
13 scheduling Committee to see what will happen with
14 respect to the schedule, and then we do expect to
15 continue to work with CEC attorney/staff to
16 prepare and finalize an MOU.

17 HEARING OFFICER VALKOSKY: Approximately
18 how long after the issuance of the -- and take
19 your choice here -- preliminary or final staff
20 assessments would the City of San Jose be able to
21 act?

22 MS. PREVETTI: We are looking at the
23 final staff assessment as essentially a final EIR
24 equivalent. We would need at least three weeks
25 after its certification to prepare a staff report

1 and have the planning commission hearing. Then we
2 would need at least a couple of weeks after that
3 for our city council to meet.

4 In looking at the various dates that
5 have been provided by the applicant and by the
6 CEC, it looks as if we're probably going to be
7 having city council hearings in mid- to late-
8 August, which would essentially require a special
9 city council meeting, which means the council
10 would need to decide whether or not they choose to
11 hold an extra hearing on this matter.

12 HEARING OFFICER VALKOSKY: If they did
13 not choose to hold an extra hearing, when would
14 the item come up in the normal course of business?

15 MS. PREVETTI: It would be the first
16 Tuesday of September. The city council has not
17 set their calendar yet for the next fiscal year
18 2000/2001, but typically they hold evening
19 hearings on the first and third Tuesday.

20 HEARING OFFICER VALKOSKY: In addition
21 to the final staff assessment, are there any other
22 determinations by other agencies that the City
23 would require before it could reach resolution of
24 the matter?

25 MS. PREVETTI: We are really looking to

1 the California Energy Commission's process and its
2 FSA to be as complete as possible so that we can
3 use it as a CEQA equivalent document and EIR
4 equivalent document. So we would expect that
5 through the CEC process, all necessary agencies
6 would be contacted and would have an opportunity
7 to participate and comment on the adequacy of the
8 document.

9 HEARING OFFICER VALKOSKY: When you say
10 as complete as possible, do you mean entirely
11 complete, or is there room in there for
12 determinations that you would not need for the
13 City to reach its decision?

14 MS. PREVETTI: As we are reviewing this
15 case we're finding that there are a lot of very
16 complex issues that have interrelationships among
17 each other, so we believe that it's very important
18 that these issues be thoroughly analyzed, and that
19 agencies having jurisdiction or having interests
20 have the opportunity to critique the work and make
21 sure that those areas have been analyzed as
22 thoroughly as possible.

23 HEARING OFFICER VALKOSKY: Okay, thank
24 you, Ms. Prevetti.

25 MR. RICHINS: Stan, she also has some

1 general comments she'd also like to make when
2 appropriate.

3 HEARING OFFICER VALKOSKY: I'm sorry,
4 are they tied into what we've been discussing
5 right now, or --

6 MS. PREVETTI: They are tied to the
7 schedule and some of the comments and presentation
8 made by the applicant. We'd like to be part of
9 the record, if we could?

10 HEARING OFFICER VALKOSKY: Okay, the
11 procedure I'd like to use is I just go through the
12 parties, and then I guess actually you'll be the
13 final commenter on the scheduling matter. Okay?

14 MS. PREVETTI: Okay, thank you very
15 much.

16 HEARING OFFICER VALKOSKY: Concerning
17 the scheduling matters, Mr. Murphy, do you have
18 anything?

19 MR. MURPHY: Yes, sir.

20 HEARING OFFICER VALKOSKY: Speak into
21 the microphone, please.

22 MR. MURPHY: Sure. May I address
23 questions based upon what Mr. Harris was speaking
24 about?

25 HEARING OFFICER VALKOSKY: You can --

1 yes, that's --

2 MR. MURPHY: Thank you. The City of San
3 Jose set the August date; they discussed this
4 during the -- I forget the date of the meeting,
5 the big one -- they discussed August, the planning
6 committee, anyway, talked about August being the
7 date. And that wasn't one that they were
8 requiring Calpine/Bechtel to be ready by. It
9 wasn't their choice. They were saying that that's
10 when Calpine/Bechtel would be ready with their
11 information, their EIR equivalent report.

12 It just sounded like you were saying
13 that the City was requesting that date. And I
14 think it was the other way around.

15 PRESIDING MEMBER LAURIE: Excuse me, Mr.
16 Murphy. I would very much appreciate it if you
17 would direct your questions or comments to the
18 Chair.

19 MR. MURPHY: Okay.

20 PRESIDING MEMBER LAURIE: So, did you
21 have a question of the Committee?

22 MR. MURPHY: Yes. Please correct me, if
23 I want to ask a question based upon a statement
24 Mr. Harris made?

25 PRESIDING MEMBER LAURIE: Yes. And, let

1 me explain why I'm doing this. We have an unusual
2 number of parties in this case. And we cannot
3 complete the proceeding if we end up in an oral
4 free-for-all.

5 So we're really trying to maintain a
6 degree of organization in this proceeding. So, we
7 will be glad to help you formulate questions, if
8 you have any. So go ahead and take your time and
9 don't worry about formalities. What is it that
10 you're trying to seek?

11 MR. MURPHY: To correct an impression, I
12 think.

13 PRESIDING MEMBER LAURIE: Okay.

14 MR. MURPHY: My impression from Mr.
15 Harris' comments were that the City had requested
16 that August be sort of a deadline time by which
17 they expected Calpine --

18 HEARING OFFICER VALKOSKY: Okay, Mr.
19 Harris, what's the genesis of the August date in
20 your proposed schedule for the consideration by
21 the planning commission and the City?

22 MR. HARRIS: My understanding is that's
23 the earliest date the City would consider. But I
24 really don't want to speak for the City. I think
25 it would be appropriate --

1 HEARING OFFICER VALKOSKY: So, your
2 understanding, that's --

3 MR. HARRIS: That's my understanding,
4 yes.

5 HEARING OFFICER VALKOSKY: -- early --
6 okay, that's the answer, Mr. Murphy.

7 MR. MURPHY: Okay, thank you.

8 HEARING OFFICER VALKOSKY: Anything
9 further?

10 MR. MURPHY: Yes. The office park
11 screening that was invented or created by Calpine
12 was to satisfy the public's request that it look a
13 little nicer than the original plan, and I
14 understand now that they're going to be removing
15 50 feet of that visual screening.

16 I wondered if that was due to air
17 quality questions?

18 HEARING OFFICER VALKOSKY: That, the
19 best answer I think anyone can give you now is
20 that when the proposal is submitted it will be
21 analyzed. I would expect, and this is just
22 totally off the record, that, yes, it would affect
23 the air quality modeling because of the pattern of
24 wind flow and dispersion.

25 So, I think you're probably going to end

1 up with something, a balance there between visual
2 and air, but that's not something we're really
3 going to discuss at length tonight.

4 MR. MURPHY: Okay.

5 HEARING OFFICER VALKOSKY: Okay.

6 MR. MURPHY: Thank you.

7 HEARING OFFICER VALKOSKY: All right,
8 Mr. Grothus.

9 MR. GROTHUS: Yes. I just want to
10 support the concern of Mr. Valkosky regarding the
11 ability of CEC to meet the schedule in the final
12 area of the schedule, the PMPD, the revised PMPD,
13 and the CEC decision. I believe that you have a
14 valid concern there.

15 I'd also like to be sure to support the
16 concern of the staff of Paul Richins in regarding
17 the split of the PSA. I also agree that that is a
18 bad idea. There are many complex issues that
19 require a single report for this information.

20 At the workshop last night that was one
21 of the key things that they mentioned was this is
22 a very complex process, and I believe that by
23 splitting it up that it's not the right thing to
24 do.

25 The final point is the applicant is

1 proposing basically a slip of the schedule up
2 front of approximately two weeks. And then
3 compressing things on the back end. And I do not
4 believe that is in the best interests of the
5 community and the overwhelming concern for this
6 project and this facility.

7 HEARING OFFICER VALKOSKY: Thank you,
8 sir. Mr. Scholz.

9 MR. SCHOLZ: I didn't know I was going
10 to be next. I would have to say that in general,
11 based on the scheduling orders, that the two that
12 we have to choose from I definitely support the
13 CEC version with the provision that we slip by 15
14 days because the Sup C is going to come out on
15 February 15th.

16 I definitely believe that we need plenty
17 of time once supplemental C comes out to have our
18 community technical review team to be able to
19 review all of that material.

20 I support Mr. Richins in what he said,
21 and Mr. Valkosky. That giving us only the 30 days
22 at the end to review the Presiding Member's
23 Proposed Decision in this case is probably
24 insufficient time, to just give us the minimum.

25 I want to support the fact and make it

1 known that from my intervenor standpoint it's my
2 opinion that I do not want the preliminary staff
3 assessment split into more than one document.
4 This project's been difficult to get a handle of
5 what we're reviewing, and I think it would add
6 complexity definitely in the reviewing process if
7 the PSA goes in more than one part.

8 And I think having one document insures
9 that when the PSA does come out it's analyzing the
10 same project that it originally started out to be
11 analyzing. Many times we're getting different
12 analyses based on different projects as the
13 project changes.

14 One more point. The reason why I
15 wouldn't support the Calpine accelerated schedule
16 is we were originally supposed to be done with the
17 PSA process, and knowing what that document was
18 going to contain on December 7th. You know, we're
19 slipped past that.

20 I don't think, you know, they should get
21 points because now we're going to, you know, have
22 to wait several months before a document can be
23 created.

24 HEARING OFFICER VALKOSKY: Okay, thank
25 you, sir. Mr. Wade.

1 MR. WADE: I'll be brief. I support the
2 proposal by the staff. It meets all of our
3 objectives.

4 Just briefly, I believe that there
5 should be one AFC for us to review. It's less
6 complex. And I believe that we need as much time
7 as possible to review the preliminary staff
8 assessment. Thanks.

9 HEARING OFFICER VALKOSKY: Thank you,
10 sir. Ms. Cord.

11 MS. CORD: Thank you. I would concur
12 about the concerns mentioned earlier about
13 splitting the PSA into more than one document. I
14 think this proposal already is difficult to
15 follow. I might say it's nearly impossible to
16 follow the stack. I think a tall gentleman told
17 me it goes up to his hip, and so on me it's
18 probably up to my shoulder, of how many documents
19 we have to look at.

20 I think dividing it into more than one
21 part would be unwieldy.

22 I assume that we're going to have this
23 modeling issue worked out, the use of a non-
24 approved model by the applicant, and of course,
25 that's a very broad assumption since that hasn't

1 happened yet. But assuming that happens, I think
2 that these dates could start to fall in order.

3 But I think the data request situation
4 that we talked about earlier needs some further
5 amplification in terms of the scheduling. And I
6 think the statements by applicant that there has
7 been compliance in terms of the statutory amount
8 of time required or allowed for the responses to
9 come in, I think that while there may be minimal
10 compliance, and I would really stress the minimal
11 compliance, that many of the responses we've
12 gotten to date have been, in fact, refusal to
13 respond to the question or to the data request.

14 And I would say that if this is a trend
15 that's going to continue it makes it very hard and
16 really takes longer for intervenors to be able to
17 review the process, or review the project.

18 HEARING OFFICER VALKOSKY: Thank you,
19 ma'am. Mayor Kennedy.

20 MR. BOYD: You skipped me, sir.

21 HEARING OFFICER VALKOSKY: Oh, Mr. Boyd,
22 I'm sorry.

23 MR. BOYD: That's fine. Basically my
24 concerns are, first, and I guess I pose this as a
25 question, isn't the Commission subject to the 12-

1 month limit that is statutorily established by
2 CEQA for state agencies?

3 HEARING OFFICER VALKOSKY: No, the
4 Commission is not. The Commission operates
5 pursuant to Public Resources Code 25522, --

6 MR. BOYD: Which is the Warren-Alquist
7 Act?

8 HEARING OFFICER VALKOSKY: -- which is
9 the Warren-Alquist Act. I also believe that
10 provision essentially provides that unless the
11 schedule for a decision is extended by mutual
12 agreement between the Commission and the
13 applicant, our decision is due within 12 months.

14 I hope you also heard Mr. Harris waive
15 that 12-month provision.

16 MR. BOYD: Okay. My concern, as an
17 intervenor in this matter, is I am an intervenor
18 in several other projects and the other projects
19 I've been involved in, whenever I, as an
20 intervenor, requested more time to provide
21 information I was denied that request by the
22 Commission. I did it on two occasions in the
23 Delta Project.

24 And now we have the applicant, it seems
25 with the concurrence of the Commission, agreeing

1 to extend the schedule an additional six months.
2 It seems to me that you have a contradiction when
3 you're dealing with the applicant and you're
4 dealing with the intervenors' requests for more
5 time.

6 And I don't think the intent of that 12-
7 month period that's spelled out in the Warren-
8 Alquist Act was to extend the schedule an
9 additional six months. And I believe the reason
10 the schedule has been extended -- is being
11 proposed to be extended six months, is because the
12 applicant's proposal is not clear. And I do not
13 think it is any longer data adequate.

14 Now, assuming that you will go for the
15 18-month schedule, I will speak on some of the
16 specific items in the schedule.

17 First, I concur with staff that we
18 should not separate out the preliminary staff
19 assessment, and I would also encourage that they
20 do not do that for the final staff assessment, as
21 well. That was the case in the Delta project.
22 You had three parts to the final staff assessment
23 in that project.

24 It makes it very difficult for the
25 intervenors to raise factual information,

1 specifically air impacts, and those impacts on
2 other areas like biological, flora/fauna, when we
3 don't have the data.

4 If the data comes out after the hearing
5 how can we have a meaningful impact on that
6 analysis?

7 The other issue that I would like to
8 raise that also came to my attention with the
9 Delta project is it appears we have the final
10 determination of compliance by the Bay Area Air
11 Quality Management District coming out almost two
12 months before the final staff assessment is heard.

13 This creates a problem because the final
14 determination of compliance acts as the issuance
15 of a PSD permit by the Bay Area Air Quality
16 Management District. And as such, any party that
17 wishes to appeal this only has 30 days to do so.
18 And they must appeal that to the EPA Environmental
19 Appeals Board in Washington, D.C. Failure to do
20 so wouldn't be timely.

21 It's very difficult to file an appeal if
22 the final staff assessment hasn't even -- the
23 hearing on the final staff assessment hasn't even
24 been completed yet.

25 So, I would strongly suggest that the

1 hearing on the final staff assessment be done
2 within two weeks of the issuance of the final
3 determination of compliance so that the hearing
4 and the transcript will have a meaningful impact
5 on any subsequent appeal to the appeals board.

6 Thank you.

7 HEARING OFFICER VALKOSKY: Thank you,
8 Mr. Boyd. Mayor Kennedy.

9 MAYOR KENNEDY: Thank you, Mr. Chair,
10 and Commissioners.

11 Just to put Morgan Hill in perspective,
12 as you are probably aware, Morgan Hill is a small
13 community of about 30,000 people, about seven
14 miles downwind of the proposed Calpine power
15 plant.

16 Also, Morgan Hill Unified School
17 District has three schools that are in fairly
18 close proximity to the proposed site, including
19 this school that we're in this evening.

20 We have had a committee of our city
21 council that has been working, trying to work
22 diligently, including two council members from our
23 city council, to understand the proposed project.

24 The conclusion that we have reached is
25 that our council voted unanimously to oppose this

1 project.

2 With respect to the schedule --

3 (Applause.)

4 MAYOR KENNEDY: -- I am concerned that
5 lengthening the schedule -- this is a very
6 grinding process, a process that tends to wear
7 down people -- I'm concerned that if it continues
8 to be delayed it will deny the public the due
9 process and the ability to keep their attention
10 focused on the issues at hand.

11 So I would not support extending the
12 schedule. I think it should be an aggressive
13 schedule and once again, the City of Morgan Hill,
14 as intervenors, has voted unanimously to oppose
15 this project.

16 Thank you.

17 (Applause.)

18 HEARING OFFICER VALKOSKY: All right,
19 please. Ms. Prevetti.

20 MS. PREVETTI: Thank you, Mr. Chair.
21 I'd like to make just a couple more comments with
22 respect to the schedule.

23 First of all, the City of San Jose
24 agrees with the CEC Staff regarding a single PSA.
25 It's absolutely critical that we do have a single

1 document, not only for the reasons that were
2 mentioned by staff, but in addition, we do
3 consider the PSA to be essentially a draft
4 environmental impact report equivalent, and it
5 would be very difficult for our planning
6 commission and other members of our public to have
7 to deal with a document that's in various pieces.
8 So we would prefer having a single PSA.

9 Second, with respect to the schedule,
10 the applicant has proposed some very specific
11 dates when our city council would hold a hearing.
12 We respectfully request that a more general
13 timeframe be prepared in the final schedule and
14 the revised schedule.

15 For example, an acknowledgement of
16 within the month of August would be preferable,
17 since it appears, given the various comments for
18 both the applicant and the staff, that the
19 schedule will probably slip even further. We
20 cannot commit to a particular date since it looks
21 like we may need to ask our city council to set a
22 specific new hearing. And I cannot commit on
23 behalf of the council that they will, in fact, do
24 that.

25 Third, with respect to the evidentiary

1 hearings, those proposed schedules identify
2 hearings occurring beginning before our city
3 council has taken action on the discretionary
4 items before them. And we prefer, if at all
5 possible, for the evidentiary hearings to commence
6 after our city council has acted.

7 In this way the City of San Jose's
8 comments and participation in those hearings will
9 reflect the actions and concerns of our city
10 council.

11 If, however, you do choose to open those
12 hearings we request that you keep the record open
13 so that we can continue to have input after the
14 time that our council does act. In particular
15 we're very concerned about several technical areas
16 and request the opportunity to comment on those
17 after our city council has taken action,
18 specifically land use, transportation, water,
19 hazardous materials and air quality.

20 Thank you very much.

21 HEARING OFFICER VALKOSKY: Thank you,
22 Ms. Prevetti.

23 MR. BOYD: I have a point of
24 information. Point of information?

25 HEARING OFFICER VALKOSKY: Mr. Boyd.

1 MR. BOYD: It's my understanding that
2 the Presiding Member's Decision is the CEQA
3 equivalent of the draft EIR, and is that not the
4 case?

5 PRESIDING MEMBER LAURIE: That is not
6 the case.

7 MR. BOYD: That is not -- that's the
8 CEQA equivalent of the final EIR? Can somebody
9 explain to me the relationship between the staff
10 analysis and the EIR process?

11 PRESIDING MEMBER LAURIE: Mr. Valkosky.

12 HEARING OFFICER VALKOSKY: Having our,
13 okay, the process, as a whole, is viewed as the
14 equivalent of the environmental impact report
15 process.

16 There is no binding determination
17 anywhere that I am aware of that would link a
18 specific document in our process to a specific EIR
19 type of document. You look at the process as a
20 whole.

21 The detailed information, the
22 environmental review information that you would
23 find in a traditional EIR, is, in our process,
24 most typically contained in both the preliminary
25 and the final staff assessments.

1 The Presiding Member's Proposed Decision
2 is as its name implies, a decisional document. It
3 summarizes relevant information, relevant
4 environmental matters, relevant issues that were
5 raised during the proceeding, and it contains the
6 Commission's rationale and decision on those
7 items.

8 All right?

9 MR. BOYD: Thank you for that
10 clarification.

11 (Pause.)

12 PRESIDING MEMBER LAURIE: Ladies and
13 gentlemen, while we're waiting just let me note I
14 really appreciate the fact that this process
15 tonight is probably very tedious for you.

16 I understand your concerns and I'm quite
17 certain that you really want to get to the point.
18 I assure you --

19 (Applause.)

20 PRESIDING MEMBER LAURIE: I assure you,
21 and those involved know that we will be doing
22 that. As noted earlier in the evening, this is a
23 business/process meeting. And I apologize that we
24 are dealing with these process issues. And as we
25 set the schedule you'll have a much better

1 understanding of when you will be getting to the
2 points that you are most concerned with.

3 Meanwhile, I very much appreciate your
4 patience. Mr. Valkosky, are you done with
5 scheduling issues?

6 HEARING OFFICER VALKOSKY: I am. Just
7 let me check the parties. Are there any other
8 scheduling discovery coordination issues that were
9 the point of tonight's conference?

10 Mr. Harris.

11 MR. HARRIS: No, we have nothing else.

12 HEARING OFFICER VALKOSKY: Ms. Willis.
13 Mr. Richins.

14 MR. RICHINS: No, we don't.

15 HEARING OFFICER VALKOSKY: Any of the
16 other parties? Final views? Mr. Scholz.

17 MR. SCHOLZ: I just wanted to get a
18 clarification from Laurel Prevetti, if possible.

19 HEARING OFFICER VALKOSKY: Please.

20 MR. SCHOLZ: Did you say that the city
21 council at the earliest could hear the land use
22 decisions was the first meeting in September?

23 MS. PREVETTI: Through the Chair.
24 Again, it really depends upon when the final staff
25 assessment is certified and is available for our

1 use. Depending on that date we would essentially
2 have the clock running about three weeks later.
3 We expect to hold our planning commission hearing,
4 assuming that it falls on a regularly scheduled
5 date. And then at least two weeks later we would
6 convene a city council meeting.

7 So at this time it's difficult to commit
8 to a particular date, but based on the information
9 before me, I would say we're probably looking at
10 mid to late August for our city council, at the
11 earliest.

12 MR. SCHOLZ: I just wanted to make sure
13 there was enough time, because it was my
14 understanding that the city council's on vacation
15 for the whole month of July?

16 MS. PREVETTI: That's correct.

17 MR. SCHOLZ: So will they have enough
18 time to review the documents and meet with the
19 public and, you know, what-have-you prior to their
20 decisionmaking process and the hearings that I
21 would imagine the City would have with the
22 planning commission and the public?

23 MS. PREVETTI: We believe so. It's
24 certainly possible that our planning commission
25 may choose to hold a couple of hearings on this

1 item. If it's an item of great complexity
2 sometimes they choose to do this.

3 Again, I can't speak for them because
4 we're not there at that point in the process. But
5 we believe we can certainly meet a schedule so
6 long as it's generally left in terms of a
7 timeframe, such as within the month of August we
8 would hold city council hearings.

9 MR. SCHOLZ: Thank you.

10 HEARING OFFICER VALKOSKY: Okay. Thank
11 you, sir. With that, that will conclude the
12 discussion by the parties on this.

13 We will have an opportunity for public
14 comment, and what I'd prefer to do, due to the
15 time constraints we have and the size of the
16 audience, is that when we have the opportunity for
17 public comment, to the extent you have any
18 comments on the scheduling or the other matters
19 discussed today, make it then rather than having a
20 separate opportunity now. And, again, I just
21 don't think we'll be able to accommodate everyone
22 otherwise.

23 PRESIDING MEMBER LAURIE: We will be
24 taking this matter under submission, so your
25 comments at the end of the meeting will still be

1 timely.

2 Ladies and gentlemen, there has been a
3 request by the Santa Teresa Citizens Action Group,
4 which is a party, to make a presentation. Ms.
5 Cord, let me ask the nature of your presentation?

6 MS. CORD: Yes. I think we wanted to
7 summarize some of the concerns of the
8 neighborhood.

9 PRESIDING MEMBER LAURIE: Ms. Cord, will
10 you indicate to the Committee how that is relevant
11 to the purpose, as noticed, of today's meeting?

12 MS. CORD: Yes, we have concerns that
13 have come to us through our research and through
14 members of the community about the scheduling that
15 we would like to address at this particular
16 meeting.

17 PRESIDING MEMBER LAURIE: So, are you
18 telling me that your presentation deals with
19 scheduling issues?

20 MS. CORD: Yes, absolutely.

21 PRESIDING MEMBER LAURIE: Okay. You've
22 indicated that your presentation will take no more
23 than 30 minutes?

24 MS. CORD: Correct.

25 PRESIDING MEMBER LAURIE: Okay. Ms.

1 Cord, I'd just like to note that we will provide
2 an opportunity for that presentation. To the
3 extent that the issues do not pertain to the
4 matters at hand, but rather go to substantive
5 issues of this case, I would ask you to present
6 those at the appropriate time.

7 We do understand that your organization
8 represents a large number of individuals. We
9 respect that. And we will accommodate that. I
10 will ask that you keep your comments relevant.

11 Ms. Cord.

12 MS. CORD: Thank you, sir.

13 PRESIDING MEMBER LAURIE: Would you
14 rather be there or would you rather come up front?
15 What's more convenient for you?

16 MS. CORD: I think I'll take the
17 microphone in front.

18 PRESIDING MEMBER LAURIE: Ladies and
19 gentlemen, we will test these microphones. If the
20 folks in the back cannot hear, I guess you can't
21 raise your hands if you can't hear --

22 (Laughter.)

23 PRESIDING MEMBER LAURIE: We will test
24 it out.

25 (Pause.)

1 MS. CORD: I do have an agenda for the
2 30 minutes that I'd like to give to Mr. Valkosky
3 at this point.

4 Thank you, Commissioners, Staff, Mr.
5 Valkosky. We're glad that you're visiting our
6 beautiful area tonight. I do hope that you were
7 able to arrive here early enough to get an idea of
8 what our home looks like, and I want to emphasize
9 that this is our home that you're in.

10 And when I say home, I'm referring to
11 the nearly 1 million residents of the City of San
12 Jose, and the many more who live in surrounding
13 cities, who have an interest in this project and
14 look to you, the Commissioners, to shape policy
15 and enforce guidelines in our state, and
16 particularly in our community.

17 The members of the Santa Teresa Citizen
18 Action Group, particularly our technical review
19 team, has taken a great deal of time in these last
20 six months to do extensive research into this
21 project, into the Calpine/Bechtel AFC, into the
22 Energy Commission and into the energy generation
23 industry. We share with you tonight the results
24 of some of our work.

25 First of all, as you are aware, a

1 project of this magnitude requires a tremendous
2 amount of careful scrutiny. The project schedule
3 so far has not followed anywhere near the dates
4 originally proposed. Milestones have been
5 repeatedly changed and delayed.

6 The reluctance or inability of the
7 applicant to respond to data requests on a timely
8 basis has been a surprise to us. We thought these
9 people were experts and knew the answers at least
10 about their own project. We don't understand the
11 slowness of the responses, some of which are
12 outstanding for many months, some of which have
13 been refused to be answered.

14 The Metcalf Energy Center proposed would
15 be the number one stationary source of NOx
16 emissions in the City of San Jose, and the seventh
17 in Santa Clara County. Total emissions from the
18 power plant would be nearly four tons per day.

19 I'd like to point out that there are
20 seven schools within a three-mile radius of the
21 proposed power plant site; three of them within
22 about one mile of the proposed power plant site.
23 The total enrollment of those schools is 4000
24 school children.

25 Neighborhood homes are approximately

1 one-half mile from the power plant site. And the
2 planned Cisco campus for the Coyote Valley area
3 which intends to locate 20,000 employees will be
4 within one-eighth of a mile of the proposed power
5 plant site.

6 The natural topography of the immediate
7 vicinity called Coyote Narrows, is basically
8 funnel shaped. The proposed site is located --

9 MR. ELLISON: Mr. Chairman, point of
10 order here, please.

11 We do not have any objection to Ms. Cord
12 making a presentation on the schedule issues,
13 which are the topic tonight. However, in looking
14 at what I was just handed was her agenda for her
15 30-minute presentation, and in listening to what
16 she has begun to say, it appears to me that she's
17 addressing the substantive issues of the project.

18 AUDIENCE SPEAKER: And we listened to
19 Harris go on for 30 minutes about nothing.

20 (General audience participation.)

21 PRESIDING MEMBER LAURIE: Mr. Ellison, I
22 note your objection.

23 Ms. Cord, as noted, I would ask that you
24 restrict your comments to the purpose of the
25 meeting tonight.

1 MS. CORD: Yes, --

2 PRESIDING MEMBER LAURIE: You know, as a
3 party intervenor, that you will have more than
4 adequate opportunity to state your case on the
5 substantive matters.

6 MR. ELLISON: Mr. Chairman, if I can
7 just say two more things about this. One is my
8 concern is if we're going to get into the
9 substantive issues of the project in front of this
10 many people, it is only fair that the applicant be
11 given an equal amount of time to respond to these
12 issues.

13 There are two concerns we have about
14 that. One of them is we were not noticed and had
15 not planned to do that. But, secondly, we don't
16 have time, within the time constraints of this
17 meeting, to do that.

18 PRESIDING MEMBER LAURIE: I know, I --
19 (General audience participation.)

20 PRESIDING MEMBER LAURIE: No, no, no,
21 no. Ladies and gentlemen, I will ask that you
22 allow the meeting to proceed, please.

23 Mr. Ellison, your --

24 MR. ELLISON: My last point is simply to
25 say that specifically items three and four of her

1 agenda I think are quite clearly not related to
2 the schedule.

3 MS. CORD: Can I just clarify that's not
4 deducted from my 30 minutes? Thank you. Shall we
5 proceed?

6 PRESIDING MEMBER LAURIE: Ms. Cord, I
7 will advise you that your comments today must be
8 restricted to the matters at hand. I will allow
9 some leniency, but issues that are substantive
10 must be presented at the time that the substantive
11 matters are to be heard.

12 MS. CORD: Yes, sir, thank you.

13 MR. BOYD: I have a point of
14 clarification.

15 PRESIDING MEMBER LAURIE: Mr. Boyd.

16 MR. BOYD: I notice on the agenda here
17 that all it states is that there will be a
18 presentation by Santa Teresa Citizen Action Group.
19 It does not state in the agenda that that
20 presentation is in any way limited to the two
21 motions that were entertained tonight, the motion
22 to disapprove, or the motion to set --

23 PRESIDING MEMBER LAURIE: Mr. Boyd, the
24 Committee issued a legal notice. And pursuant to
25 the law, we can only discuss what was in the legal

1 notice. Otherwise folks can properly argue that
2 they did not have adequate time to be prepared.

3 Thus, --

4 MR. BOYD: So the presentation wasn't
5 part of that notice, is that what you're saying?

6 PRESIDING MEMBER LAURIE: The
7 presentation was part -- no, no. But we are
8 permitting public comment to the extent that it is
9 consistent with the notice.

10 So, Ms. Cord, please proceed.

11 MS. CORD: Thank you.

12 PRESIDING MEMBER LAURIE: Mr. Ellison's
13 objections are noted.

14 (Applause.)

15 MS. CORD: The reason the schedule needs
16 to allow for further study, among other reasons,
17 is that the natural topography of the immediate
18 vicinity called Coyote Narrows is basically funnel
19 shaped. The proposed site is located between
20 Santa Teresa Boulevard and Monterey Highway, both
21 major north/south arteries for our community; and
22 along with 101, the only access to points south.

23 And is located at the confluence of two
24 creeks, Fisher Creek and Coyote Creek. The South
25 Bay already has the worst air quality in the Bay

1 Area. We are already in nonattainment status for
2 ozone and particulates. I think any attempt to
3 speed up the proceedings would not give us
4 adequate time to judge these important issues, and
5 to do the research that would be required.

6 Another factor requiring further study
7 is the alternative site analysis. I'd like to
8 point out that of the nine power plant proposals
9 currently under active review by the Energy
10 Commission, six of them, which is nearly 70
11 percent, have no neighborhood intervenors who
12 oppose the project.

13 I would suggest that given the
14 tremendous number of proposals expected before the
15 Commission this year, that preference be given to
16 energy companies that have taken the time and
17 trouble to identify appropriate locations for
18 energy generating facilities.

19 Some companies are not so arrogant as to
20 show up in a heavily populated area and expect
21 changes to nearly all existing planning and zoning
22 guidelines and refuse input from concerned
23 residents who, after all, were there first.

24 (Applause.)

25 MS. CORD: Finally, I'd like to take a

1 moment to introduce two of my children in a
2 general sense. These are three of my six
3 children, who join me here tonight. And I would
4 like you to direct your attention for a moment not
5 only to my kids, but to the many other children
6 who are here tonight with their parents.

7 You may know that San Jose has the
8 largest population of any city in the Bay Area.
9 What you may not know is that San Jose has the
10 greatest number of children per household of any
11 city in the Bay Area.

12 These are the faces of the future. They
13 are here to learn a living lesson in how our
14 government works for us. Although they cannot yet
15 vote, they must live with the consequences of the
16 decisions you make on their behalf. We hope you
17 will act as their protectors.

18 I would suggest to you that with the
19 tremendous factors at work here and the potential
20 for significant consequences to an enormous number
21 of people, any attempt to shorten the timeframe
22 for this project would be unconscionable.

23 I urge you to follow the CEC Staff
24 recommendation of an additional six-months review
25 time.

1 Thank you. And I'd like now to have Mr.
2 Jeffrey Wade, who's the Director of our Technical
3 Review Team, make a few comments.

4 Thank you.

5 HEARING OFFICER VALKOSKY: Thank you,
6 Ms. Cord.

7 (Applause.)

8 MR. WADE: Thank you, Mr. Chair.

9 PRESIDING MEMBER LAURIE: Mr. Wade, I
10 would admonish you the same as I did Ms. Cord.

11 MR. WADE: Yes, sir.

12 You'll see that my comments are fairly
13 brief and relevant to the scheduling issues. I'll
14 talk primarily about the status of our data
15 requests that's been the focus of the technical
16 review team's efforts recently.

17 We're a neighborhood group. We don't
18 have the resources of the applicant, and so we
19 rely heavily on the laws and the CEC review
20 process to insure adequate health and safety
21 review.

22 We feel that Calpine/Bechtel has not
23 exhibited good faith towards the neighborhood
24 residents in this process. But, instead --

25 (Applause.)

1 MR. WADE: But, instead is cynically
2 abusing it. This is evidenced in part by the fact
3 that they respond to requests for data in a very
4 superficial way, or reject them as burdensome or
5 redundant.

6 Our data requests are designed to
7 clarify the following items: First, what are the
8 benefits of the project to our community, and can
9 these benefits be obtained at a reasonable
10 alternative site.

11 Number two, what are the environmental
12 and socioeconomic impacts of the project. And
13 three, what are the margins of uncertainty about
14 the stated impacts.

15 And this last item is of particular
16 interest to us. It doesn't have a vehicle of
17 review in the normal courses of inquiry. As
18 citizens, laws and regulations are not necessarily
19 the only consideration, but additional data may be
20 required to provide confidence that safety's
21 maintained.

22 Calpine/Bechtel is staging a PR
23 onslaught with glossy flyers and back-room
24 meetings. We require the CEC review process to
25 keep them accountable on the record.

1 For example, the applicant has produced
2 mass mailings which are designed to mislead, and
3 we submit part of our response to those mailings
4 into the record. I won't read them here. But I
5 would ask that they be entered into the record for
6 your review.

7 HEARING OFFICER VALKOSKY: Okay, you may
8 provide those to Ms. Mendonca and she will insure
9 that they're docketed, which is part of the
10 administrative record of this proceeding.

11 MR. WADE: Thank you, sir.

12 Regarding the data request status for
13 air quality analysis, for example, the applicant
14 has claimed repeatedly that our air would actually
15 be cleaned by the power plant.

16 HEARING OFFICER VALKOSKY: Okay, okay,
17 okay, sir, and again, what would help the
18 Committee out is not whether you necessarily agree
19 or disagree with what applicant has responded, but
20 whether in fact they have given responses and the
21 adequacy that you need to review.

22 Because I'm sure if you participate in
23 the workshops you understand that our staff and
24 the other parties will, in fact, be analyzing any
25 of the responses that applicant has prepared.

1 Okay, so really tonight we're just
2 trying to establish the status of the discovery
3 and the time needed, not the sufficiency, and not
4 the type of answer provided, okay?

5 MR. WADE: I do understand that, and the
6 purpose of these points is to point out that the
7 responses have met the process, the minimum
8 requirements. They responded that they won't
9 respond in adequate time.

10 But for example, in the second set of
11 data requests that we received, let's see, 23
12 items out of the 40 were not responded to, but
13 were, in fact, considered either redundant or
14 burdensome or argumentative or some other -- there
15 was some other reason why they weren't going to be
16 responded to.

17 HEARING OFFICER VALKOSKY: Okay, sir,
18 and I would just inform you that applicant has a
19 right not to respond to data requests on certain
20 grounds.

21 If you are not satisfied with that
22 response, and you cannot work something out with
23 the applicant, you have the right to file a motion
24 to attempt to compel responses.

25 Basically what happens then is it comes

1 to the Committee. We either have a hearing or
2 have some papers filed, and the Committee makes up
3 its mind. You know, so that's an avenue that's
4 available.

5 MR. WADE: Thank you. We will pursue
6 that with the motion. In the meantime I would ask
7 that you allow a schedule that provides adequate
8 time for us to deal with the resistance from the
9 applicant in accessing data.

10 Thank you.

11 HEARING OFFICER VALKOSKY: Okay, just
12 the last follow-up. I take it then that you would
13 be in support of the staff's proposed schedule, as
14 opposed to the one proposed by applicant?

15 MR. WADE: Yes, --

16 HEARING OFFICER VALKOSKY: That's
17 correct?

18 MR. WADE: -- my comments previously
19 indicated.

20 HEARING OFFICER VALKOSKY: Thank you,
21 Mr. Wade.

22 MR. WADE: Thank you. Mr. Alton is
23 going to follow me with comments on the need and
24 the power reliability issues.

25 PRESIDING MEMBER LAURIE: And, sir,

1 explain relevancy to scheduling, please.

2 MR. ALTON: Okay, the relevancy of this
3 is a discussion on the reliability impacts, the
4 need, and how the public could analyze this data
5 in sufficient time --

6 PRESIDING MEMBER LAURIE: And so what
7 specifically is your request?

8 MR. ALTON: My request is for enough
9 time to analyze the data. Could I read my
10 redacted letter? I've taken out all the stuff
11 that goes to the --

12 CHAIRMAN KEESE: Can I ask a question?
13 Which date is not adequate?

14 MR. ALTON: I'm sorry, I'm not saying
15 that the data is inadequate -- well, --

16 CHAIRMAN KEESE: No, we have said the
17 staff has recommended dates, and the applicant has
18 recommended dates. Which date do you find
19 inadequate?

20 MR. ALTON: I don't find any dates
21 inadequate, I'd just like to speak on --

22 CHAIRMAN KEESE: That's --

23 MR. ALTON: -- my issue.

24 CHAIRMAN KEESE: -- what we're
25 discussing.

1 MR. ALTON: Right, I'd like to speak --

2 CHAIRMAN KEESE: Which dates are
3 inadequate? Or adequate?

4 MR. ALTON: I'm saying that the dates
5 that the staff are providing seem to be adequate
6 at this time.

7 CHAIRMAN KEESE: Thank you.

8 MR. ALTON: Can I go on?

9 CHAIRMAN KEESE: What is relevant
10 after -- if you're supporting the staff's
11 dates, --

12 MR. ALTON: Is that all you need?

13 CHAIRMAN KEESE: That's all we're going
14 to make a decision on today.

15 PRESIDING MEMBER LAURIE: Don't feel
16 that you're being deprived of an opportunity to
17 provide input. You will --

18 (Laughter.)

19 PRESIDING MEMBER LAURIE: Or at least
20 don't take it personally.

21 (Laughter.)

22 MR. ALTON: I've been to several
23 meetings where I've been told not to feel that I'm
24 being deprived of input.

25 PRESIDING MEMBER LAURIE: No meetings

1 that I have attended, sir.

2 MR. ALTON: That's correct, mostly
3 workshops.

4 PRESIDING MEMBER LAURIE: Now, as we
5 have noted, this Committee, the Commission has the
6 utmost understanding of your right to participate
7 in this proceeding. And we assure you that you'll
8 have ample opportunity to exercise that right.

9 We've indicated that there is a process
10 to be followed. And I think you have an
11 understanding of what that process is, and we
12 intend to follow that process.

13 Tonight we are talking about scheduling.
14 Your party has indicated an agreement to the
15 schedule. That's all we need. Input regarding
16 air quality or other substantive issues will be
17 discussed during the course of our later
18 proceedings.

19 MR. ALTON: Okay, this was not to air
20 quality, this was to need and reliability.

21 PRESIDING MEMBER LAURIE: Okay, but we
22 understand. We understand your party's position.
23 Your party has stated its position regarding the
24 scheduling. That's the purpose of this
25 proceeding. Okay?

1 MR. ALTON: Okay. Thank you.

2 PRESIDING MEMBER LAURIE: Thank you,
3 sir.

4 MR. BOYD: I would like to object
5 because of what I said earlier that this is listed
6 on the agenda as a presentation by Santa Teresa
7 Citizen Action Group. If the intent of the
8 Committee was to not have a presentation, then the
9 agenda item should have clearly specified what the
10 purpose was of the presentation.

11 (Applause.)

12 MR. BOYD: I object to this.

13 (Applause.)

14 MR. BOYD: I would like that reflected
15 in the record.

16 (Applause.)

17 PRESIDING MEMBER LAURIE: Thank you, Mr.
18 Boyd, that objection will be reflected in the
19 record.

20 Is the party done with your
21 presentation?

22 MR. SCHOLZ: I'll take a stab if you
23 will allow it?

24 MS. CORD: Okay, --

25 MR. WADE: May I make a comment to the

1 Commissioners, please?

2 PRESIDING MEMBER LAURIE: Sir.

3 MR. WADE: I just wanted to point out
4 that our intention wasn't simply to convey our
5 position on the power plant, but to talk to the
6 relevance of the status of our data discovery,
7 which I thought was relevant. And I think, I
8 still think is relevant to the proceedings today.

9 Our intent is to show that our ability
10 to acquire information has been difficult and
11 hampered and met with resistance, and subsequently
12 we are asking that a very nonaggressive schedule
13 be settled on. That's the connection.

14 HEARING OFFICER VALKOSKY: Okay, Mr.
15 Wade, you've looked at the schedule proposed by
16 staff, have you not?

17 MR. WADE: Yes.

18 HEARING OFFICER VALKOSKY: Okay. Does
19 the timing in that schedule, in your view, provide
20 you adequate opportunity to gather information and
21 to analyze that information?

22 MR. WADE: I believe if all the parties
23 were sincere in their efforts to provide data that
24 schedule would be efficient.

25 HEARING OFFICER VALKOSKY: Well, we will

1 assume sincerity. I mean, you know, --

2 (General audience participation.)

3 MR. ELLISON: Mr. Valkosky, --

4 HEARING OFFICER VALKOSKY: All right,
5 please --

6 MR. ELLISON: Mr. Valkosky, if I may,
7 I'd like to respond.

8 HEARING OFFICER VALKOSKY: All right,
9 Mr. Ellison, briefly, please.

10 MR. ELLISON: I will be brief, and
11 hopefully constructive.

12 The issue that Mr. Wade raises is, of
13 course, a relevant issue. And I think it is
14 relevant to what we're talking about tonight, the
15 issue of data, the issue of responses to data
16 requests is pertinent.

17 Now, I think in some cases the
18 presentation went beyond that, but let's focus on
19 the issue of data requests.

20 We believe that we have sincerely
21 responded to all the data requests. There are
22 some that we believe are objectionable. But most
23 importantly, data requests are not the only way to
24 exchange information. They're not the best way.

25 You have your right, and you should

1 exercise it, to do as Mr. Valkosky described, if
2 you believe that we're not responding, to file a
3 motion to compel and we'll address that.

4 But let me be clear, we have offered,
5 and I want to reiterate it again tonight, to sit
6 down with the technical team and any other
7 intervenors that are interested, and to discuss
8 the data, to present the information we have, to
9 bring our technical experts and to respond to any
10 questions that you might have.

11 So far you haven't wanted to do that.
12 But I want to reiterate that offer, because that's
13 a much more -- that kind of communication is a
14 much more effective way of communicating. We may,
15 at the end of the day, disagree. That's your
16 right. But we would welcome, and I emphasize
17 this, there's a great deal, we think, of
18 misinformation out there. We think the more
19 information the better. We would welcome the
20 opportunity to sit down with you, your experts,
21 our experts, and have that conversation.

22 And if we do that and you're still
23 unsatisfied at the end, you have all your rights
24 to pursue whatever legal proceedings you wish to
25 pursue.

1 But I would emphasize very much that we
2 would like that opportunity.

3 HEARING OFFICER VALKOSKY: Okay, Mr.
4 Wade, do you intend to take Mr. Ellison up on
5 that?

6 MR. BOYD: Excuse me, how is this
7 relevant to the schedule?

8 (General audience participation.)

9 HEARING OFFICER VALKOSKY: It's very
10 simple, Mr. Boyd.

11 MR. BOYD: I'm curious.

12 HEARING OFFICER VALKOSKY: That's not
13 the object. Mr. Boyd, if you'll notice, if you'll
14 read the notice, it says we will discuss
15 discovery. We will discuss scheduling. The
16 exchange of information is part of scheduling.

17 MR. BOYD: Well, all this --

18 HEARING OFFICER VALKOSKY: This is
19 discovery.

20 MR. BOYD: -- people are speaking on --

21 HEARING OFFICER VALKOSKY: That's
22 enough, Mr. Boyd.

23 MR. BOYD: -- discovery, not --

24 HEARING OFFICER VALKOSKY: Mr. Boyd, I'm
25 having a conversation with Mr. Wade at this point.

1 Mr. Wade, do you intend to avail
2 yourself of Mr. Ellison's offer? Just yes or no,
3 please. Just yes or no.

4 MR. WADE: I have discussed this subject
5 with Mr. Abreu on several occasions in public, and
6 I have stated that I would prefer that we continue
7 our discussions in public so all the members of
8 the community can also participate --

9 (General audience participation.)

10 HEARING OFFICER VALKOSKY: Okay. Thank
11 you. Thank you. I appreciate your candor on
12 that. Thank you very much.

13 Mr. Ellison, you --

14 MR. ELLISON: If I may simply say one
15 more thing. We will have that discussion in
16 public, but we think we ought to have the
17 discussion.

18 HEARING OFFICER VALKOSKY: Ms. Cord.

19 MS. CORD: Mr. Scholz has a comment he
20 was going to make.

21 MR. SCHOLZ: This is getting a little
22 testy and I just wanted to try and make this
23 relevant, if you would allow me to regroup.

24 MS. CORD: While you're doing that, Mr.
25 Ajlouny has some comments he wants to share.

1 MR. AJLOUNY: Commissioners, this is
2 regarding to the schedule. I just want to inform
3 you that I understand you weren't at the city
4 council meeting on November 8th, the San Jose City
5 Council, when they had their hearings whether to
6 change the general plan or not.

7 And I also support to extend the process
8 to allow a FSA to be presented so the City of San
9 Jose planning department can analyze it, and then
10 from there the City of San Jose Council can make a
11 decision whether to change the general plan.

12 This project is unique in the area of
13 there's a general plan change that has to take
14 place, because the land is not coded to put a
15 power plant there. It's very significant.

16 And what's very frustrating for all of
17 us here, and myself, I've got a major headache
18 right now, is because we're spending not hours,
19 not days, but weeks on this project.

20 And what concerns me is the only reason
21 we are here tonight is because the City of San
22 Jose City Council is so scared of you and you,
23 because you guys can override the city council.
24 That's what they said November 8th in the meeting.

25 I propose to you two, if there's any way

1 that you can express to the City of San Jose that
2 you are not willing to override a decision -- let
3 me finish, Laurel -- the only reason I ask for
4 that is because during the mayor's race, when our
5 mayor today stated that he is for no general plan
6 changes. Okay. So he has stated that in the
7 election time that he's for the general plans and
8 the way they stand today, and doesn't really go
9 for the changes.

10 It would really help us all a lot if
11 there's some way you can communicate and make this
12 a little more warm and fuzzy communications saying
13 generally you don't override the city council, or
14 you definitely wouldn't in this case, because
15 we're a large community.

16 And when I bought my house 15 years ago
17 that land was not zoned for a power plant. It's
18 for people like Cisco who want to build their --
19 who also have their concerns.

20 I would love it, and I think everyone
21 here would love it if you would just say that you
22 would not override the City of San Jose, and maybe
23 I can get on with my life, and stay at my job with
24 IBM.

25 (Applause.)

1 MR. AJLOUNY: I get a little excited --
2 (General audience participation.)

3 MR. AJLOUNY: You know, Commissioners, I
4 apologize, I get a little excited because this is
5 an emotional thing, and I don't mean to be rude,
6 but I was being sincere about that.

7 Is there any way in writing, because
8 this is a hearing, is there any way that you can
9 communicate that right now in a hearing, we can
10 get a document, give it to the city council,
11 because right now our city council will not even
12 give us a hint of what they're thinking because
13 they're worried about lawsuits. The said it in
14 their own meetings in the library right behind us.
15 Everyone --

16 HEARING OFFICER VALKOSKY: Sir, --

17 MR. AJLOUNY: -- is afraid of --

18 HEARING OFFICER VALKOSKY: -- there is
19 no way the Committee can respond to anything like
20 that.

21 (General audience participation.)

22 PRESIDING MEMBER LAURIE: Do you want an
23 answer?

24 MR. AJLOUNY: Yeah, --

25 PRESIDING MEMBER LAURIE: -- and I don't

1 think you were rude. I understand everybody's
2 feelings about this. You're talking about your
3 land, and I respect that.

4 We are obligated, under the law, to
5 issue a decision based upon evidence presented.
6 Everybody understands that, that's what you want,
7 that's what the law commands.

8 We are obviously barred from prejudging
9 any issue. You should understand that. There is
10 no evidence presented. We will be going through a
11 trial, a hearing. Most assuredly you're not
12 asking us to issue a decision or offer comment on
13 evidence that has not, as yet, been presented.
14 And we are absolutely legally barred from doing
15 so.

16 And that, sir, is why we cannot respond.

17 MR. AJLOUNY: And I respect that. I
18 guess what I'm asking, Commissioner, is that we
19 understand you can't say whether you want the
20 power plant or not, and it's a legal thing.

21 But I guess what I'm asking is the City
22 of San Jose has a decision to make whether to
23 change that general plan from whatever it is
24 today, the quasi-public-quasi to make it allowable
25 to build a power plant.

1 And I guess what I'm asking, is it
2 unfair for us to understand what the likelihood,
3 if the City of San Jose voted today and said we
4 are not going to change that general plan because
5 it was a general plan we've had for years and
6 we've promised the community, and we want to build
7 up that community as many Ciscos and HPs and IBMs
8 and that kind of thing, is it unreasonable to ask
9 you to just say whether you're going to override
10 the City of San Jose if they choose to do that?

11 PRESIDING MEMBER LAURIE: I do not
12 believe that it is unreasonable for you to ask.

13 MR. AJLOUNY: It's unreasonable for you
14 to answer.

15 PRESIDING MEMBER LAURIE: And I
16 certainly understand why you would want to ask.
17 For the same reason we cannot respond.

18 One, the Commission, as a whole, I think
19 based upon our recommendation, would decide
20 whether or not to do an override. Whether or not
21 to recommend an override can only be based upon
22 the facts and evidence presented. And thus, sir,
23 any discussion of that is legally premature.

24 Again, I understand why you would want a
25 prejudgment on the issue. We simply cannot do

1 that.

2 MR. AJLOUNY: Well, I just feel you're
3 holding the City of San Jose captive, and the city
4 council captive. We have three opponents right
5 now running for council that are all opposing this
6 power plant. So I vote to extend this into the
7 middle of the year 2001 so the PSA comes out in
8 January of 2001 because our opponents already said
9 that's running for city council that they oppose
10 this power plant.

11 So I guess I ask for six more months on
12 the record.

13 (Applause.)

14 MR. BOYD: I'd like to ask for a point
15 of information. Isn't what the gentleman is
16 asking for declaratory relief from the Committee?

17 PRESIDING MEMBER LAURIE: No, sir.

18 MR. BOYD: In the Delta case there was a
19 series of questions that were posed similar to
20 this that were submitted --

21 HEARING OFFICER VALKOSKY: Sir, this is
22 not the Delta case.

23 MR. BOYD: I'm just asking what is the
24 proper forum for this question to be raised?

25 PRESIDING MEMBER LAURIE: The questions

1 has been raised, and the question will be
2 considered.

3 MR. BOYD: Okay, thank you.

4 MS. CORD: Mr. Scholz, did you have --

5 MR. SCHOLZ: I was going to speak to a
6 specific point, but to demonstrate the point that
7 why the schedule considerations that we would
8 propose are relevant to be enacted.

9 I don't want to go into evidentiary
10 examples, because that's not what you're looking
11 for. This project was announced in our community
12 in February, which is ten months ago. The AFC was
13 filed in April, eight months ago. The preliminary
14 staff assessment for this project was supposed to
15 be done December 7th. And this whole process was
16 supposed to be over in June of next year.

17 This community is going through
18 tremendous emotional turmoil and now we're going
19 to be -- you're asking the community to buy into
20 extending this schedule.

21 Ideally I would like this project either
22 judged on its original merits, and we all know
23 that it's flawed and it should be rejected; or we
24 actually spend enough time to gather all the data
25 so we can make an intelligent decision of, you

1 know, whether this project should be built or not.

2 The point, all I was going to mention
3 was about real estate values and the study that's
4 been submitted to the CEC. Even with the new
5 schedule that the CEC, which is better than
6 Calpine's, so that's why I supported it in the
7 initial motion, if we were to really do a real
8 estate study of how our property values are going
9 to be impacted, we're going to need more than the
10 next three months to redo the one that they've
11 already submitted.

12 Right now if people want to sell their
13 home have to disclose the possibility of this
14 power plant. When the study was done that they
15 submitted to the CEC that they're going to use for
16 their analysis in which they think, oh, gee, real
17 estate values are impacted, the buyers didn't even
18 know the power plant was coming.

19 The data in that study is irrelevant.
20 As of about probably 30 days ago the local real
21 estate board now requires that the power plant be
22 disclosed. So, I think we need enough time to
23 gather data to determine whether or not that
24 really is going to impact property values.

25 Yes, you do. You have to divulge the

1 likelihood of it's going to be here. So you only
2 need to divulge potential things that would affect
3 the material value of your property.

4 HEARING OFFICER VALKOSKY: Mr. Scholz,
5 about how long are you talking, in terms of
6 gathering your data? How long beyond what is
7 proposed by staff?

8 MR. SCHOLZ: I think at least six months
9 of data that takes into consideration of at least
10 two seasons, you know, you got the winter season
11 and the spring season. You kind of get a
12 demonstration of, you know, winter's probably a
13 poor time to be selling a home. Spring is
14 probably a much superior time to sell a home.

15 HEARING OFFICER VALKOSKY: So, in other
16 words, you're fundamentally indicating that there
17 would have to be another six months of discovery
18 tacked on, --

19 MR. SCHOLZ: With the proper study, with
20 the proper study.

21 HEARING OFFICER VALKOSKY: -- is that
22 correct?

23 MR. SCHOLZ: And that's all I was going
24 to speak about --

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. SCHOLZ: -- because right now the
2 City of Morgan Hill, I've talked to the Coyote
3 Valley developers who are representing the Cisco
4 project. They said the City of Morgan Hill is
5 experiencing a 40 percent increase in property
6 values due to the Cisco announcement. And I think
7 that's kind of excessive if you take that on
8 merit, you know, if that's a fact.

9 But our property values in our community
10 are stagnant. So, --

11 HEARING OFFICER VALKOSKY: Okay, --

12 MR. SCHOLZ: -- whatever perceived
13 benefits the Cisco project has done for our
14 community have been absolutely canceled out by the
15 announcement --

16 HEARING OFFICER VALKOSKY: Okay, okay --

17 MR. SCHOLZ: -- of the power plant --

18 HEARING OFFICER VALKOSKY: Okay, Mr.
19 Scholz, I understand your position. And assuming
20 this case proceeds, that will certainly be
21 discussed.

22 Again, I'm just trying to frame how much
23 time. As I understand it you think there should
24 be a six-month --

25 MR. SCHOLZ: Like I said, this

1 community's -- if you take what I'm saying, this
2 community's already impacted. And this process
3 would be -- could potentially be denied in the
4 next six months if we stuck to the original
5 schedule that we set forth in July.

6 HEARING OFFICER VALKOSKY: Okay. So,
7 now your point is you have the original schedule
8 or you have an extended schedule, --

9 MR. SCHOLZ: Much more --

10 HEARING OFFICER VALKOSKY: -- which
11 one --

12 MR. SCHOLZ: -- extended schedule where
13 we really get to the bottom of all of these issues
14 that the intervenors in the community are raising.

15 HEARING OFFICER VALKOSKY: Okay, thank
16 you. Thank you, appreciate that.

17 MS. CORD: Okay, then I just have a
18 closing --

19 HEARING OFFICER VALKOSKY: Ms. Cord.

20 MS. CORD: -- coming here. Thank you.

21 First of all, I forgot to show you
22 earlier what 5000 petition signatures look like,
23 so I can bring this up and show it to you later,
24 but just so you get an idea of -- I can't turn it
25 in right now because it's still ongoing. We just

1 received 92 more signatures today in the mail, so
2 I just will show it to you when I come up there in
3 a minute.

4 HEARING OFFICER VALKOSKY: Okay, and you
5 will be docketing that, I take it, at some point?

6 MS. CORD: Yes, but not tonight.

7 HEARING OFFICER VALKOSKY: Okay.

8 MS. CORD: But I'd just like to show it
9 to the Commissioners tonight, because it's really
10 a work in progress still at this point. We expect
11 to have many more than 5000 signatures.

12 The Santa Teresa Citizen Action Group
13 also would like tonight to introduce a motion to
14 rescind the Commission acceptance of the
15 application for certification. And this would
16 impact the schedule quite severely. Is that
17 something you'd like me to talk about now?

18 HEARING OFFICER VALKOSKY: Actually, no.
19 You can certainly file it, you can deliver it to
20 the parties, but it's nothing that anyone is
21 prepared to react to at this point.

22 MS. CORD: Oh, no, I don't expect a
23 reaction, but this would be the appropriate time
24 to serve the --

25 PRESIDING MEMBER LAURIE: If you wish to

1 file it, you may file it.

2 HEARING OFFICER VALKOSKY: Yes.

3 MS. CORD: Okay, it's submitted by the
4 Santa Teresa Citizen Action Group. It's seconded
5 by Jeffery Wade, intervenor, Scott Scholz,
6 intervenor, Jim Cosgrove, intervenor, Michael
7 Boyd, intervenor, Michael Murphy, intervenor, and
8 Michael Grothus, intervenor.

9 It is accompanied by a motion for stay
10 of site certification proceedings while the motion
11 to rescind the Commission acceptance of the
12 application for certification is reviewed. And
13 it's also accompanied with a memorandum of points
14 and authorities in support of the motion to
15 rescind.

16 And I want to just briefly state that
17 the issue behind the motion to rescind is that the
18 project that is currently under review is not the
19 project that was submitted to you in April.

20 On the original 1200-page AFC the
21 changes --

22 PRESIDING MEMBER LAURIE: Ms. Cord, --

23 HEARING OFFICER VALKOSKY: Ma'am, you
24 can't.

25 PRESIDING MEMBER LAURIE: -- no, --

1 MS. CORD: Can't what?

2 PRESIDING MEMBER LAURIE: If you wish to
3 submit the motion tonight, please submit the
4 motion.

5 MS. CORD: Oh, you don't want me to
6 summarize it?

7 PRESIDING MEMBER LAURIE: You can't,
8 because then all parties have an opportunity to
9 respond and there's nothing to respond to. So, --

10 MS. CORD: You just want me to give it
11 to you?

12 PRESIDING MEMBER LAURIE: If you desire
13 to file the motion tonight, then you are free to
14 file the motion.

15 MS. CORD: That's what I live for. No,
16 that's good, that's good, I'd love to. Thank you.

17 I do have some blank petitions if anyone
18 here hasn't had a chance to sign one.

19 That would conclude, then, our remarks.
20 Thank you.

21 PRESIDING MEMBER LAURIE: Thank you, Ms.
22 Cord.

23 HEARING OFFICER VALKOSKY: Okay, thank
24 you, ma'am.

25 (Applause.)

1 HEARING OFFICER VALKOSKY: All right, at
2 this time, and we only have a --

3 (Pause.)

4 HEARING OFFICER VALKOSKY: All right, at
5 this time, I should say the time remaining, we
6 will take public comment. There is a microphone
7 here, and I think the only organized way to do it
8 is fundamentally proceed row to row. Just a
9 second, sir, just one second. Do you wish to make
10 public comment? Okay.

11 The procedure is you can approach the
12 microphone, identify yourself, spell your last
13 name so that the court reporter has it correctly,
14 and please be aware that there are a lot of people
15 here and we've got somewhere between 25 and 30
16 minutes left.

17 MR. BLAUM: I going take only half an
18 hour.

19 (Laughter.)

20 HEARING OFFICER VALKOSKY: Identify
21 yourself, please.

22 MR. BLAUM: My name is Mario Blaum.
23 Yesterday we had a very interesting workshop --

24 PRESIDING MEMBER LAURIE: Sir, could you
25 spell your last name for the record?

1 MR. BLAUM: Yeah, it's B-l-a-u-m, five
2 letters.

3 HEARING OFFICER VALKOSKY: B-l-a-u-m?

4 MR. BLAUM: B-l-a-u-m, Mario, M-a-r-i-o.
5 Yesterday we had a very fine workshop on
6 alternative sites. And I had the dubious honor at
7 that workshop. This gentleman, I don't remember
8 your name, with the colored tie, I was the only
9 speaker that I was not allowed to talk there, that
10 was interrupted.

11 And when I was interrupted I was asking
12 Mr. Ellison where does he live. And somehow the
13 gentleman panicked. I'm not a stalker, I'm not
14 advocating violence to Mr. Ellison or anything.

15 Mr. Ellison lives in Sacramento, Mr.
16 Ellison will come to our community. I just wanted
17 to --

18 (Audience speaker interjection.)

19 HEARING OFFICER VALKOSKY: Sir, no more
20 outbursts, please. It's not humorous, it's not
21 appropriate.

22 MR. BLAUM: No, no, no, really, no
23 violence at all. I only wanted to ask Mr. Ellison
24 a few questions --

25 PRESIDING MEMBER LAURIE: Sir, no.

1 MR. BLAUM: Okay, okay, I will answer
2 one of the questions, myself.

3 PRESIDING MEMBER LAURIE: All right,
4 sir, --

5 MR. BLAUM: Yes, I will answer them
6 myself.

7 HEARING OFFICER VALKOSKY: Okay, wait,
8 wait --

9 MR. BLAUM: One of the --

10 PRESIDING MEMBER LAURIE: Time out, time
11 out now. You've been hearing the discussions all
12 night.

13 MR. BLAUM: I'm going to take two more
14 minutes.

15 PRESIDING MEMBER LAURIE: Fine.

16 MR. BLAUM: Okay? If you keep
17 interrupting me it's going to take longer.

18 PRESIDING MEMBER LAURIE: Well, then,
19 then --

20 MR. BLAUM: One of the criteria --

21 PRESIDING MEMBER LAURIE: -- then get to
22 the point.

23 MR. BLAUM: Mr. Commissioner, please,
24 please --

25 PRESIDING MEMBER LAURIE: Get to the

1 point.

2 MR. BLAUM: Okay. One of the criteria
3 that Mr. Ellison was saying, the term is the
4 election of their sites, is that they are
5 competitive. So, they need to find a place in an
6 urban area in which there is easy access to
7 natural gas.

8 And he stated that there are no adequate
9 alternative sites to the one we have here. And he
10 stated that there is always going to be problems
11 with neighbors, and if they go further away they
12 are not going to be able to compete with other
13 companies.

14 One of the questions I wanted to ask Mr.
15 Ellison is okay, they are going to throw four tons
16 of pollution into our community by doing so, and I
17 say, fine, okay, that's only four tons of
18 pollution if that helps their competitive
19 approach.

20 However, my understanding is that they
21 cannot compete with other companies that do not
22 have problems with neighbors. Mrs. Cord said that
23 there are six other proposals. They don't have
24 this problem with neighbors.

25 So my question to him is why do we have

1 to have this four tons of pollution if we don't
2 get absolutely anything in our community. Our
3 electricity rates don't come down, our air
4 pollution is terrible. I could see today from
5 Coyote Peak it's going to be increased by that.

6 So what do we gain by that? He said
7 that the facts are going to be clear at the end of
8 the day. They keep getting worse and worse.
9 That's all, sir.

10 (Applause.)

11 PRESIDING MEMBER LAURIE: Ma'am, we're
12 going to go row by row.

13 CHAIRMAN KEESE: May I make --

14 (Laughter.)

15 CHAIRMAN KEESE: Mr. Chairman, I would
16 like to make a comment. As I'm sure that the
17 members of the audience have been advised, the
18 role of the two Commissioners here is a judicial
19 type role. We are not allowed, outside of this
20 public forum, to discuss any of these issues with
21 the applicant, with the intervenors, or even with
22 our staff.

23 So the only input we get on this issue
24 is here. I, unfortunately, have had to reject
25 everything I just heard, because the only thing I

1 can hear tonight is testimony about the schedule.

2 And so whatever you heard, which may be
3 very pleasant to you, has not had any impact on
4 me, because it had nothing to do with the
5 schedule.

6 I have to make a decision when this is
7 over whether we're going to take the existing
8 schedule and keep it, take the applicant's
9 schedule, or take the staff's schedule. That's
10 what we're seeking input on. If you can help me
11 out, I'd appreciate it.

12 Thank you, Mr. Chairman.

13 PRESIDING MEMBER LAURIE: Yes, and I
14 think Chairman Keese's point is well made. We
15 cannot consider, cannot by law consider any
16 substantive points that you make tonight.

17 And although I know you want to make
18 them, tonight is not the night to do that.

19 MR. SCHOLZ: Commissioner Laurie, can
20 you address the audience as to when the next time
21 the two Commissioners presiding over this will --
22 you'll face them again? Just so we know.

23 PRESIDING MEMBER LAURIE: When will we
24 be back?

25 MR. SCHOLZ: When will you be back to

1 hear any of this evidentiary stuff, or this
2 sentiment?

3 PRESIDING MEMBER LAURIE: The
4 evidentiary hearing will be set by the schedule.
5 And that is what we're talking about --

6 MR. SCHOLZ: So the next time we'll see
7 you is in July?

8 PRESIDING MEMBER LAURIE: I don't know.
9 We could decide to hold additional status
10 conference on specific points.

11 MR. SCHOLZ: But the Commissioners will
12 be here to hear that? You generally do not attend
13 the workshops or what-have-you??

14 PRESIDING MEMBER LAURIE: That's right.

15 MR. SCHOLZ: So you're not, most likely,
16 unless you make a special exception, you won't see
17 this community again until July, August?

18 PRESIDING MEMBER LAURIE: That's right.

19 MR. SCHOLZ: Thank you.

20 MR. BOYD: I have a question.

21 HEARING OFFICER VALKOSKY: I would also
22 note that the Committee closely monitors the
23 progress of the case. In fact, it's the reason
24 for the status conference tonight, a reason we're
25 having it down here, to discuss the scheduling

1 matters.

2 To the extent that the Committee
3 perceives that discussion of discrete topics are
4 necessary in the area, the Committee could well
5 decide to come down here. So it's not necessarily
6 an all or nothing until July. That's basically
7 what I'm saying.

8 The other thing that the Commissioners
9 are saying, and I've been trying to say all night,
10 too, is that we are not here tonight to get input
11 on the general public. Believe me, the Committee
12 understands there's a large segment of the
13 populace that is not in favor of this project at
14 the present time.

15 What we are here tonight is exactly what
16 Commissioner Laurie and Chairman Keese have been
17 saying. We need input at the present time in this
18 present instance on scheduling and discovery
19 matters. That's really what we're here for.
20 Okay?

21 Next step potentially to discuss some of
22 these other issues, that's a future step, okay?

23 MS. CORD: Is that part of the schedule
24 that's proposed now? Because I think what all the
25 people that are here want to know is when can they

1 talk to you?

2 HEARING OFFICER VALKOSKY: They can talk
3 to the Committee in a public forum. The --

4 (Audience speakers interjection.)

5 HEARING OFFICER VALKOSKY: Okay, okay,
6 when? The parties have the ability to make a
7 motion to discuss certain specific topics. The
8 Committee will then make its decision on that
9 motion. Okay?

10 (Audience interjection.)

11 HEARING OFFICER VALKOSKY: Sir, we're
12 going to ignore that.

13 MR. BOYD: I have a point of
14 clarification. There is another item on the
15 agenda besides the schedule. As I remember it,
16 there's a motion that I made that is still under
17 consideration.

18 HEARING OFFICER VALKOSKY: The motion --

19 MR. BOYD: Is it appropriate for members
20 of the public to speak on the motion to
21 disapprove?

22 PRESIDING MEMBER LAURIE: The motion has
23 been taken under submission.

24 MR. BOYD: Can the public speak on the
25 motion?

1 HEARING OFFICER VALKOSKY: Yes, the
2 public may indicate support or nonsupport on any
3 of the motions that we discussed earlier, Mr.
4 Boyd.

5 MR. BOYD: Thank you.

6 MS. CORD: So the motion to disapprove
7 is the one that you would take input from, whether
8 they would agree or not agree with the motion to
9 disapprove the project?

10 HEARING OFFICER VALKOSKY: That was one
11 of the things we discussed today. That is
12 correct.

13 MS. CORD: Thank you.

14 HEARING OFFICER VALKOSKY: Okay, ma'am,
15 identify yourself for the record, please.

16 MS. HARVEY: I'm Eva Harvey. And I
17 support the motion to disapprove the AFC. And I'd
18 like to know who in the audience also agrees on
19 this?

20 HEARING OFFICER VALKOSKY: All right, --
21 (Applause.)

22 HEARING OFFICER VALKOSKY: -- ma'am,
23 we're not -- please don't do that. That's
24 disruptive. We're not taking a vote on the
25 motion.

1 MS. HARVEY: Well, fine. I think we
2 have a right to speak sometimes. I'm beginning to
3 feel like I live in the Soviet Union, as a matter
4 of fact.

5 (Applause.)

6 MS. HARVEY: And I resent it. I'd also
7 like to ask the CEC if anyone at the CEC has taken
8 into account the cumulative environmental impacts,
9 especially air quality impact on the entire State
10 of California when all of these proposed power
11 plants, that is Calpine and others, are on line.
12 I don't think anyone is.

13 As far as I'm concerned, this state, in
14 my opinion, will not be fit to live in. We will
15 have a population impacted by unacceptable health
16 problems with consequence, enormous stress on the
17 medical system which is already experiencing the
18 overload and problems, with consequence from --

19 HEARING OFFICER VALKOSKY: Thank you,
20 ma'am.

21 MS. HARVEY: -- to both the state --

22 HEARING OFFICER VALKOSKY: Thank you,
23 ma'am.

24 MS. HARVEY: -- and the public. And I
25 think --

1 HEARING OFFICER VALKOSKY: That's all,
2 thank you.

3 MS. HARVEY: -- someone damn well needs
4 to look at it.

5 PRESIDING MEMBER LAURIE: Thank you.
6 (Applause.)

7 HEARING OFFICER VALKOSKY: Ma'am.

8 MS. SILVA: Hello, my name's Leoni
9 Silva. I have a letter here from my four-year-old
10 who's at home sick at the moment, but she wanted
11 me to pass this on to the Commissioner. Could I
12 give this to one of the Commissioners?

13 HEARING OFFICER VALKOSKY: Pass it up
14 and it will be docketed.

15 MS. SILVA: Yes?

16 HEARING OFFICER VALKOSKY: Yes, we will
17 docket it. Or you could give it to Ms. Mendonca,
18 the Public Adviser, to docket.

19 MS. SILVA: She actually asked me to
20 give it to the Commissioner.

21 HEARING OFFICER VALKOSKY: Oh, she asked
22 you? Okay.

23 (Applause.)

24 HEARING OFFICER VALKOSKY: And that will
25 be docketed.

1 MS. SWACKHAMMER: I'm Sue Swackhammer,
2 and I was happy to see Laurel mention the City's
3 interest in the water issues. What I don't see on
4 the schedule is a workshop on groundwater quantity
5 and quality, or on the recycled water situation.

6 HEARING OFFICER VALKOSKY: Thank you. I
7 would just note that staff typically schedules the
8 technical workshops. And I'm sure they'll take
9 your comments into consideration. Thank you, Ms.
10 Swackhammer.

11 Sir?

12 MR. TUCKER: My name is Jim Tucker. I'm
13 with the San Jose Silicon Valley Chamber of
14 Commerce.

15 The Chamber has taken a position that we
16 support the idea, the concept of a state-of-the-
17 art energy center in San Jose. But we have not
18 taken a specific position on the site.

19 And so the discussion tonight on the
20 schedule is very important to us, because I think
21 that's the kind of information that will be
22 developed here will help the business community
23 represented by the Chamber to come to its
24 decision, as well.

25 We do appreciate the potential for

1 organizations like ours, as well as the residents
2 of the area, the opportunities to participate in
3 the process, as outlined here.

4 The one thing I guess I would encourage
5 you, though, it seems to me that the aggressive
6 schedule suggested by the applicant is do-able,
7 and I would urge you to give that every
8 consideration.

9 Thank you, sir.

10 HEARING OFFICER VALKOSKY: Thank you,
11 sir. Yes, sir, are --

12 MR. AJLOUNY: It's relevant.

13 (Laughter.)

14 MR. AJLOUNY: I'm being serious.

15 PRESIDING MEMBER LAURIE: Let other
16 people speak first. If there's time after.

17 MR. STRUTHERS: Good evening, my name is
18 Neil Struthers, 30-year resident of the City of
19 San Jose. And I don't believe that protracting
20 out this process will of benefit to anyone. I do
21 not see any reason why workshops currently
22 scheduled or underway should not or should be
23 rescheduled.

24 It's my opinion that the applicant's
25 schedule should be followed if at all possible.

1 Thank you.

2 HEARING OFFICER VALKOSKY: Thank you,
3 sir.

4 MS. CORD: Could I just comment that the
5 people that come out to all these meetings and say
6 they love the project are sitting in the front
7 row.

8 HEARING OFFICER VALKOSKY: No, ma'am,
9 Ms. Cord -- Ms. Cord --

10 MS. CORD: Um-hum.

11 HEARING OFFICER VALKOSKY: These people
12 are making public comment.

13 MS. CORD: Well, of course, but I
14 thought we were going --

15 PRESIDING MEMBER LAURIE: Ms. Cord,
16 you're out of order. Put the microphone down.

17 MR. WILLIAMS: Everybody line up. My
18 name is Loyd Williams, and I'll spell my first
19 name and last. My first name is L-o-y-d, last
20 name Williams, W-i-l-l-i-a-m-s.

21 And that first of all I would like to
22 thank the Commission and all the support that the
23 Commission has had, the people that support it,
24 for your patience. I'd like to thank Calpine for
25 sticking with this, and taking the abuses you have

1 from the citizens of San Jose.

2 (General audience participation.)

3 HEARING OFFICER VALKOSKY: All right,
4 sir, --

5 MR. WILLIAMS: And the comments that are
6 being made behind me right now are what's delaying
7 due process and making it impossible for the
8 public to have an opportunity to have input.

9 Now, I believe --

10 HEARING OFFICER VALKOSKY: Scheduling,
11 sir, please, scheduling.

12 MR. WILLIAMS: -- that there's no reason
13 for any delay in the process. I believe that
14 everyone should take their responsibilities
15 seriously, like you have, continue with due
16 process and finalize the decision as soon as
17 possible, and protect all the rights of all the
18 citizens of San Jose.

19 Thank you.

20 HEARING OFFICER VALKOSKY: Thank you,
21 sir. Sir, if you could identify yourself?

22 MR. SABA: Fadi Saba, San Jose resident.

23 HEARING OFFICER VALKOSKY: Could you
24 spell your last name, please?

25 MR. SABA: F-a-d-i S-a-b-a. I

1 wholeheartedly support Mike Boyd's motion to
2 disapprove this project, so I hope that you
3 consider that and take that up. Very important.

4 And I definitely, by disapproving, you
5 won't need such a schedule. So I think that that
6 is very important there. Thank you.

7 HEARING OFFICER VALKOSKY: Thank you,
8 sir.

9 (Applause.)

10 HEARING OFFICER VALKOSKY: Ma'am.

11 MS. CHAVEZ NAPOLI: My name is Kathy
12 Chavez Napoli. And since you are talking about
13 identifying ourselves, I want to be very clear on
14 how I identify myself.

15 I'm a native San Josean, native American
16 and I'm very disappointed with this process. My
17 ancestors were taken over by the government and we
18 were told what the rules are. What I've seen you
19 do today is very disappointing because you're
20 changing some of the rules.

21 On the agenda it says general public
22 comment. That means that I, as a citizen, should
23 be able to talk about what I think is important.
24 And so for me I hope that you will listen, I hope
25 that you will listen to these people here.

1 A lot of them had to go because they did
2 have young children or they had to go to a job
3 tomorrow. But let me just give you a little bit
4 about who we are.

5 You probably have heard of Silicon
6 Valley, haven't you? We used to be known as a
7 Valley of Hearts Delight. But now we are Silicon
8 Valley, and the people who live in district 2 who
9 will be most affected by this power plant are the
10 people who make Silicon Valley run. They are
11 educated, they are intelligent and they know
12 what's going on. They are highly trained.

13 And so the world listens to what happens
14 here. When we describe Silicon Valley we are
15 talking about innovation, cutting edge technology,
16 and the people here are listened to throughout the
17 world.

18 So I would ask you to please listen to
19 the people from district 2. And what they are
20 telling you very clearly is that power plant does
21 not belong in this neighborhood. It does not
22 belong --

23 (Applause.)

24 MS. CHAVEZ NAPOLI: It does not belong
25 in San Jose. I know you are talking about the

1 scheduling, but again, let me remind you, my
2 ancestors got this land, not somebody else's land,
3 this land taken away because people changed the
4 rules.

5 I'm asking you, if you said general
6 public comment, please allow me to make my public
7 comment.

8 And I would like to emphasize that I am
9 running for city council because I am opposed to
10 this power plant. I was the first person to say
11 it was wrong. But more importantly, I'm the only
12 candidate who went to the San Jose City Council
13 and the Morgan Hill City Council to say it doesn't
14 belong here.

15 I recognize Mayor Dennis Kennedy who is
16 here from the Morgan Hill City Council. He had
17 the courage to say no because just because you
18 live in Morgan Hill, just because you live in
19 Coyote Valley, just because you live in district 2
20 does not mean that we don't count. We all count,
21 don't we?

22 (Applause.)

23 MS. CHAVEZ NAPOLI: So I would ask
24 you --

25 HEARING OFFICER VALKOSKY: Ma'am, again,

1 again, we're not taking a vote --

2 MS. CHAVEZ NAPOLI: My two brothers --

3 HEARING OFFICER VALKOSKY: -- at this
4 time.

5 MS. CHAVEZ NAPOLI: My two brothers
6 served in Viet Nam and were wounded to protect my
7 rights to speak, to protect the rights of these
8 people to speak. They have been very patient.
9 You have been talking about a lot of technical
10 things.

11 But the bottomline is we are all
12 taxpayers. We are residents. And we have the
13 right to speak up.

14 HEARING OFFICER VALKOSKY: Yes,
15 ma'am, --

16 MS. CHAVEZ NAPOLI: And we don't have to
17 just talk about --

18 HEARING OFFICER VALKOSKY: Yes, --

19 MS. CHAVEZ NAPOLI: -- scheduling.

20 HEARING OFFICER VALKOSKY: Yes,
21 ma'am, --

22 MS. CHAVEZ NAPOLI: That is a way to
23 stop the democratic process by --

24 PRESIDING MEMBER LAURIE: Thank you.

25 MS. CHAVEZ NAPOLI: -- narrowly focusing

1 what we can --

2 PRESIDING MEMBER LAURIE: Thank you.

3 Please, please --

4 MS. CHAVEZ NAPOLI: -- talk about.

5 PRESIDING MEMBER LAURIE: Please

6 terminate --

7 MS. CHAVEZ NAPOLI: So, please --

8 PRESIDING MEMBER LAURIE: Please

9 terminate --

10 MS. CHAVEZ NAPOLI: -- I encourage --

11 PRESIDING MEMBER LAURIE: -- terminate

12 your comments.

13 MS. CHAVEZ NAPOLI: -- I encourage

14 you --

15 PRESIDING MEMBER LAURIE: Thank you very

16 much.

17 MS. CHAVEZ NAPOLI: -- to extend that

18 schedule so that the people who live here, so that

19 the people who care about what is going to be

20 happening to our community have the ability to

21 research it properly.

22 PRESIDING MEMBER LAURIE: Thank you very

23 much.

24 MS. CHAVEZ NAPOLI: And I ask for --

25 PRESIDING MEMBER LAURIE: Thank you,

1 thank you very much. Please cease. You are out
2 of time.

3 (General audience participation.)

4 PRESIDING MEMBER LAURIE: You are out of
5 time. Ma'am, --

6 MS. CHAVEZ NAPOLI: -- you don't --

7 PRESIDING MEMBER LAURIE: Ma'am, give up
8 the microphone. Give up the microphone.

9 MS. CHAVEZ NAPOLI: As I said, my
10 brothers fought for me to be able to have the
11 right to speak. I'm sorry you don't support that.
12 I'm very sorry you don't support that. But they
13 protected your rights, too.

14 So, again, we have the right to come and
15 talk and make general public statements.

16 PRESIDING MEMBER LAURIE: Thank you very
17 much.

18 (Applause.)

19 PRESIDING MEMBER LAURIE: Yes, sir, you
20 have three minutes.

21 MR. RUSSELL: Phillip Russell,
22 R-u-s-s-e-l-l. I live on Martinvale Lane, three
23 blocks from here. I am a resident of this
24 neighborhood. I'm one of your vendors, guys. And
25 I don't think you belong in this neighborhood.

1 And I'll tell you why. I'm one of those
2 bright guys with a masters from CalPoly, and I
3 want an in camera study done on Bechtel's
4 miserable safety record. Because I was there when
5 you built Diablo Canyon backwards.

6 HEARING OFFICER VALKOSKY: Sir, again,
7 scheduling --

8 (General audience participation.)

9 MR. MITCHELL: Do you want to give them
10 an opportunity to respond to that?

11 PRESIDING MEMBER LAURIE: No.

12 MR. MITCHELL: My name is Phil Mitchell.
13 I am a resident of the local area. That's
14 Mitchell, M-i-t-c-h-e-l-l.

15 I have five points I want to make very
16 quickly. First of all, I didn't see how the
17 alternative studies fit into the schedule, and I
18 had a question I guess for --

19 HEARING OFFICER VALKOSKY: The
20 alternative study is part of the preliminary staff
21 analysis. It will be revised to be included as
22 part of the final staff analysis.

23 MR. MITCHELL: So that would come out in
24 April, first of all?

25 HEARING OFFICER VALKOSKY: Mr. Richins,

1 there is no separate schedule for the alternative
2 study, is that correct?

3 MR. RICHINS: Yes, sir.

4 HEARING OFFICER VALKOSKY: That is
5 correct.

6 MR. MITCHELL: So is the staff person in
7 charge of the alternative study in agreement that
8 that could be done by April? Okay.

9 HEARING OFFICER VALKOSKY: Why don't you
10 just --

11 MR. MITCHELL: The next point I wanted
12 to make was I wanted to support the comments made
13 earlier about the recalcitrance of the applicant
14 in responding to data requests.

15 The number was 42 that weren't responded
16 to, something like that. I think the schedule is
17 very tenuous at best if that record continues.
18 And, you know, we've been told that oh, we ought
19 to meet private in order to get that information.
20 I don't think that's the way the process is set up
21 to work.

22 And I think when we ask a question we
23 expect an answer, and an honest answer. And I
24 would expect the staff and the Commission to
25 uphold our rights to get those answers. Without

1 it our review is meaningless and we can't respond
2 effectively to the project.

3 Related to the data requests, I would
4 like to bring up a point that I feel is related to
5 the schedule. And it has to do with the public
6 relations blitz that the applicant has begun.

7 I think your staff should look into the
8 poppycock that's being published, and into the
9 data integrity in what's being published. The
10 first advertisement insert didn't even indicate it
11 was an advertisement. And I'm speaking to what
12 they're calling public service announcements being
13 placed in all the local times papers throughout
14 the City of San Jose.

15 HEARING OFFICER VALKOSKY: Sir, how is
16 this tied to scheduling?

17 MR. MITCHELL: It ties to the schedule
18 because they're putting in there data from who
19 knows which project, but selectively inserting
20 data that I think ought to be verified by your
21 staff. And I think that ought to be built into
22 the schedule.

23 (Applause.)

24 MR. MITCHELL: Lastly, I have two more
25 points. It was alluded to earlier that the impact

1 on the community has been severe from going
2 through this process. I would just like to argue
3 that despite the fact I'm in support of extending
4 the schedule, I want to point out to the
5 Commissioners and the Committee that that's at
6 great expense to this community.

7 That means we've got to spend more
8 hours, more days, more weeks reviewing the data
9 that's going to come out. And I'd only urge you
10 to make sure the data is packaged properly, it
11 doesn't come out piecemeal, but is well integrated
12 and it is reviewable.

13 The record to date has been abysmal.
14 And that leads me to my last point, I support the
15 motion that was filed earlier about their delay in
16 getting data requests filed. I would also -- I
17 support the motion that was filed and docketed. I
18 also support the motion that was just served
19 tonight. And I urge you to look at that very very
20 carefully. We don't know what project we're
21 reviewing as of today.

22 Thank you very much.

23 HEARING OFFICER VALKOSKY: Thank you,
24 Mr. Mitchell.

25 PRESIDING MEMBER LAURIE: Thank you.

1 (Applause.)

2 MR. LADASKY: My name is John Ladasky,
3 local resident, L-a-d-a-s-k-y. You guys really
4 threw me a curve tonight, kind of restricting
5 everything to scheduling.

6 So I'll do my best. If I say schedule
7 every other fifth word, I don't know, maybe I can
8 fit it in that way.

9 I attended the workshop last night on
10 alternate sites. I brought up scheduling at that
11 time, I tried to understand how much time and
12 effort was going to be put into the alternate
13 sites.

14 I came away with the impression that all
15 the other alternate sites were going to be given
16 lip service, and not studied in any great extent
17 like the site here.

18 So if I want to put a scheduling spin on
19 this, I think that we should look at the
20 alternative sites with the same amount of emphasis
21 that we look at this site.

22 Now, I want to address this scheduling
23 meeting, okay. I feel like I'm an open-minded
24 person and sometimes I look at the technical
25 aspects of this power plant and see some merit in

1 it.

2 I can't figure out whether I hate more
3 this power plant, or the process, the political
4 maneuvering that we're doing here. This is more
5 revolting to me than the smoke that's coming out
6 of that place.

7 (General audience participation.)

8 MR. LADASKY: Now, I want to thank these
9 folks over here that put in a lot of effort, you
10 know, they're housewives, they're engineers, they
11 have families and jobs. They're doing this in
12 their spare time, attempting to become power plant
13 engineers, lawyers and politicians.

14 You got a team over here of highly
15 expensive professional people with a big staff.
16 Now, we got some cameras rolling on the media
17 that's here tonight. You know, you really
18 demonstrated how we got the Yankees over here, the
19 professional Yankees, beating up on this Little
20 League team over here.

21 Is this public input?

22 (General audience participation.)

23 PRESIDING MEMBER LAURIE: Ladies and
24 gentlemen, just letting you know that I've been
25 handed a note indicating that we are required to

1 terminate the meeting at 9:45.

2 And so we will be doing so. Sir.

3 MR. ALTON: My name's Tim Alton,
4 A-l-t-o-n. I live one mile from the proposed
5 site.

6 I'd just like to speak to what Mr.
7 Ellison referred to as misinformation that was put
8 out there. Here's an example of how we have to
9 double our work in terms of reviewing what's in
10 the documents, and also what Calpine has fed into
11 the public.

12 Here's an example of the public
13 relations efforts from Calpine which avoids the
14 transformer issue and pokes at the public's hatred
15 of transmission lines. Calpine: While some power
16 comes from as far away as the Pacific Northwest,
17 these transmission lines are carrying as much
18 electricity as they can in peak periods to meet
19 the Bay Area's growing needs new transmission
20 lines will have to be built.

21 This is false. As we can see from the
22 AFC, --

23 PRESIDING MEMBER LAURIE: Sir, we have
24 12 minutes, and there is --

25 MR. ALTON: Thank you.

1 PRESIDING MEMBER LAURIE: -- a bunch of
2 people behind you. So in order to be fair, just
3 make your point.

4 MR. ALTON: That's it.

5 PRESIDING MEMBER LAURIE: Thank you.

6 MR. ALTON: I'm basically saying it's
7 false. There's enough transmission lines to bring
8 twice the amount of power to Metcalf Substation as
9 is currently going as well.

10 (Applause.)

11 MR. SCHADE: Good evening, my name is
12 Henry Schade, and the court reporter already has
13 my name and spelling.

14 I'm here to address the motion to
15 disapprove based on what I feel are inappropriate
16 nonfactual statements presented in tonight's flyer
17 by Calpine. And also in an article in The San
18 Jose Mercury, I believe it was November 16th. And
19 I will quote from the statement from Neil Popsiko,
20 "Calpine environmental managers say we will
21 achieve a net air quality improvement in San Jose
22 as well as in the whole Bay Area." They're going
23 to reduce pollution. They're going to raise
24 pollution by four tons a day.

25 PRESIDING MEMBER LAURIE: Thank you,

1 sir.

2 HEARING OFFICER VALKOSKY: Thank you.

3 (Applause.)

4 MS. WONG: I'm Suzanna Wong. I want to
5 come in on the schedule in that the schedule can
6 be delayed indefinitely with superficial responses
7 from the applicant.

8 And that would not be fair to the public
9 in terms of the review. Given that we have full-
10 time jobs, it is taking -- this project has been
11 taking away our productive time for the community
12 and for the city and for the country.

13 And I just want to ask the Energy
14 Commission to consider that to do their
15 responsibility in terms of making sure that the
16 applicant gives very prompt responses and utilize
17 our time efficiently for your consideration.

18 PRESIDING MEMBER LAURIE: Thank you very
19 much.

20 HEARING OFFICER VALKOSKY: Thank you,
21 ma'am.

22 (Applause.)

23 MS. CHEN: My name is Song Chen, spelled
24 C-h-e-n. I live quite far from here, but I just
25 visited earthquake stricken Taiwan. And coming

1 back here I'm very impressed that although USGS
2 already predict high seismic activity going to
3 happen in this area, and have all the
4 professional, you know, put all the money in the
5 area where geologically it's feasible we going to
6 have higher possibility every year having a big
7 earthquake like what is happened in Taiwan or
8 Turkey.

9 So I found this very interesting and
10 very questionable about, you know, about where our
11 heads are.

12 PRESIDING MEMBER LAURIE: Thank you very
13 much.

14 HEARING OFFICER VALKOSKY: Thank you.
15 (Applause.)

16 MR. ABDUR'RAHEEM: Good evening, my name
17 is Yahya, last is spelled A-b-d-u-r'R-a-h-e-e-m,
18 Abdur'Raheem.

19 Commissioners and staff, I thank you
20 very much for allowing me to address this body. I
21 look forward to a thorough review of this project
22 in accordance with the applicant's schedule.

23 Thank you very much.

24 PRESIDING MEMBER LAURIE: Thank you.

25 HEARING OFFICER VALKOSKY: Thank you,

1 sir.

2 MR. LANGLOIS: I'd like to ask this
3 gentleman --

4 HEARING OFFICER VALKOSKY: No, sir.

5 PRESIDING MEMBER LAURIE: Sir, --

6 MR. LANGLOIS: -- where in South San
7 Jose he lives.

8 PRESIDING MEMBER LAURIE: -- sir,
9 address the Chair, please.

10 MR. LANGLOIS: Fine, thank you. Steve
11 Langlois, L-a-n-g-l-o-i-s.

12 And the reason I get up is because this
13 gentleman and a couple others were at the city
14 council meeting. I was sitting behind two of them
15 who got up and spoke in favor of the motion made
16 by Calpine at that time.

17 Sitting behind them I think it's
18 important to note that one gentleman got up and
19 talked as the second lady's name had been called
20 to go get in line. She looked at the list. I
21 happened to notice that it said suggested topics
22 for tonight's meeting.

23 In other words, she had prompts which
24 had been given to her, I don't know by whom, to
25 get up and say, in front of the mayor and the city

1 council.

2 PRESIDING MEMBER LAURIE: That's fine,
3 sir.

4 MR. LANGLOIS: That, to me, is very
5 disturbing as a member of this society, who's
6 going to breathe this air and live with the
7 impacts of the housing prices here.

8 (Applause.)

9 MR. LANGLOIS: I think it's important
10 that the CEC understand who it's doing business
11 with and what measures they're willing to take in
12 order to convince you.

13 My issue is if this is such a great
14 plant why are they having to stoop to such
15 measures in order to convince us that it's okay.

16 I'd ask Calpine to be honest and to deal
17 with us fairly. Let's cut out the crap.

18 HEARING OFFICER VALKOSKY: Sir, --

19 MR. LANGLOIS: -- and let --

20 HEARING OFFICER VALKOSKY: -- scheduling
21 is --

22 MR. LANGLOIS: -- people who live here
23 voice, don't bring in plants.

24 PRESIDING MEMBER LAURIE: Thank you,
25 sir.

1 MR. LANGLOIS: The other point I'd like
2 to make, which it's been a long time since I took
3 my economics classes, but I do remember a little
4 discussion about supply and demand and its effect
5 on commodities.

6 PRESIDING MEMBER LAURIE: Sir, you have
7 one minute to complete your remarks.

8 MR. LANGLOIS: Okay. Clearly the intent
9 of their building a plant so close to the
10 substation is to lower their costs. Let's face
11 it, Calpine is not selling that electricity to
12 their wholesale customers at lower price just
13 because it costs them less money to produce the
14 electricity.

15 Calpine has a fiduciary responsibility
16 to their shareholders to maximize the price they
17 can charge for their product while maintaining or
18 improving their sales.

19 If the CEC approves this neighborhood
20 power plant, thereby lowering Calpine's prices,
21 and allowing Calpine to have a competitive
22 advantage over its competitors, it will have one
23 of two effects.

24 Either Calpine will unfairly benefit
25 from the lower cost at the expense of its

1 competitors, because they clearly won't lower
2 their costs unless competitive market forces force
3 them to. Or you will be in a position to where
4 you will also have to allow other power plants to
5 be built in neighborhoods to allow their
6 competitors the same competitive advantage which
7 is being given to Calpine if they're allowed to
8 build so close to the substation.

9 PRESIDING MEMBER LAURIE: Thank you,
10 sir.

11 (Applause.)

12 MR. DIXON: Good evening, my name is
13 Jeff Dixon, D-i-x-o-n.

14 I'd like to thank the Commissioners and
15 the staff and all the interested parties that are
16 here tonight. As a member of the community I've
17 listened to the two topics of scheduling versus --
18 the motion to set schedule versus the motion to
19 disapprove.

20 And I guess what I would like to do is
21 share some observations with the Commissioners on
22 how it has been interpreted by me and presuming
23 that I'm a representation of the community, how it
24 appears to the rest of the people that are here.

25 The CEC's in a very difficult position

1 to put this in the right context of providing
2 what's best for the power industry, as well as for
3 the region. As well as considering what's good
4 for the City of San Jose.

5 And in trying to accommodate the
6 applicant I think one of the things that's being
7 lost here is the issue and the reason that there's
8 so much time that needs to be spent and the
9 schedule is being pushed out, is that this plant
10 is going into an inappropriate location.

11 Siting cases that have the proper
12 location in mind and don't require the things that
13 this one does are moving through, as I understand
14 it, at a fairly normal pace, where this is
15 extended.

16 And while the applicant may, in fact, be
17 accommodating the state and the city by allowing
18 them to extend the schedule so that they can do
19 the research on all of the information that has
20 come in, I would like to say in looking back to
21 what I've seen in these hearings and in the
22 workshops, I believe that it is correct for the
23 Commissioners to support the motion to disapprove
24 for several reasons.

25 One, there have been major --

1 PRESIDING MEMBER LAURIE: Sir, we don't
2 have time to go into the reasons.

3 MR. DIXON: I will make it very brief, I
4 promise.

5 PRESIDING MEMBER LAURIE: Well, the
6 problem is that the people behind you want an
7 opportunity to express their view. And you are
8 taking their time. And we're interested in giving
9 them an opportunity for them to get to the point,
10 as well.

11 So, please, just present your position
12 regarding do you favor, disfavor the scheduling.
13 Do you favor, disfavor the motion.

14 MR. DIXON: I favor the motion to
15 disapprove the project because I believe there has
16 been major changes to the application. And the
17 proper approach to get this thing done correctly,
18 if you look at the schedule that is being
19 submitted by staff and the applicant, both are
20 pretty much 12 months out, which is the normal
21 process anyway.

22 PRESIDING MEMBER LAURIE: Okay, --

23 MR. DIXON: So I think it's a very good
24 idea to disapprove and just start over. And given
25 the fact that you may be 14 months out anyway, and

1 the fact that you're going. And if you are going
2 to do that, accept the motion to set schedule, I
3 would like to request that the schedule be set in
4 such a way that it leaves time for a qualitative
5 public analysis of the information as it comes
6 through, given the complexity of the case.

7 PRESIDING MEMBER LAURIE: Sir, thank
8 you.

9 MR. DIXON: Is that brief enough?

10 PRESIDING MEMBER LAURIE: Well, you
11 know, you've got people behind you. And I want to
12 make sure that they have an opportunity to put
13 their position on the record. And I'm trying to
14 accommodate that. And you're taking their time.

15 We have three minutes.

16 MR. KELLEY: Good evening, Mr. Chairman
17 and Commissioners. My name is Dennis Kelley,
18 K-e-l-l-e-y. And I'm a citizen of San Jose, a
19 resident, homeowner. I pay property taxes in San
20 Jose.

21 First of all I'd like to let you know
22 that I, for one, appreciate the Commission's
23 professionalism and business-like conduct tonight,
24 especially given the rather rude and hostile
25 audience that you've been confronted with, to say

1 nothing about a cheap campaign stunt made by a
2 self-serving local politician.

3 (General audience participation.)

4 MR. KELLEY: One thing, what I would
5 like to say is I would like to speak out in favor
6 of the applicant's proposed schedule. I see no
7 reason why the Commission should not be able to
8 follow that.

9 In the long run the Commission is still
10 going to be waiting for all the data and all the
11 reviews and of the studies to come in before they
12 pass any final judgment over it.

13 So, I support the --

14 HEARING OFFICER VALKOSKY: Thank you,
15 sir. Next.

16 MS. HELFREY: My name is Rita Helfrey.
17 I'm a local resident --

18 (General audience participation.)

19 MS. HELFREY: I'm kind of confused by
20 your agenda saying that there is to be general
21 public comment, but --

22 HEARING OFFICER VALKOSKY: It's general
23 discussion on the matters discussed tonight.

24 MS. HELFREY: Okay. And I realize that,
25 and I do understand your judicial role that you

1 have. And so in putting it in context with the
2 schedule, I would propose to submit to you to
3 delay the decision on this until the year 4000.

4 (Applause.)

5 HEARING OFFICER VALKOSKY: Thank you,
6 ma'am.

7 Sir?

8 MR. SAWYER: My name is Houghton Sawyer,
9 H-o-u-g-h-t-o-n, Sawyer like in Tom.

10 I would like to thank you, Commissioner,
11 for a very cool attachment to the rules and to
12 work this --

13 (Audience member disruption.)

14 HEARING OFFICER VALKOSKY: Ma'am.

15 MR. SAWYER: -- to work this session
16 with as much objectivity as you can. I also feel
17 very sorry for Calpine --

18 (Audience member disruption.)

19 MR. SAWYER: I have lived for 20 years
20 in Coyote Valley. And I love the place, and I
21 believe that we will eventually wind up having
22 everything either correct or we will not have it.

23 In any case, with regard to the
24 schedule, I am used to seeing a very detailed
25 schedule and recommend that we combine both

1 schedules, that is the applicant's schedule and
2 the CEC schedule, into a chart with a detail which
3 covers all actions and also a critical path, so
4 that each of us can get publication of that
5 schedule whenever it is desired.

6 And we can therefore monitor and react
7 to any of the action that comes from there.

8 I thank you for your patience.

9 PRESIDING MEMBER LAURIE: Thank you,
10 sir.

11 HEARING OFFICER VALKOSKY: Thank you,
12 sir.

13 (Applause.)

14 MR. ROSENLUND: I want to address the
15 motion for scheduling. I'd like to support --

16 HEARING OFFICER VALKOSKY: Sir, --

17 MR. ROSENLUND: -- I'd like to --

18 HEARING OFFICER VALKOSKY: -- identify
19 yourself, please.

20 MR. ROSENLUND: Oh, my name is Rick
21 Rosenlund, R-o-s-e-n-l-u-n-d.

22 I'd like to support the extension of the
23 schedule. Basically I feel like the City of San
24 Jose does not have sufficient time to do the
25 analysis, especially since they will only see the

1 final report, the final staff assessment about one
2 and a half months before their city council
3 decision.

4 The reason for that is I saw a member of
5 the city fire department here. I don't know if
6 the fire department and the police of the city
7 will have sufficient time to report on the costs
8 and the impact of the final design based on the
9 staff assessment.

10 And finally, I'd like to request an
11 extension because I think that perhaps the
12 citizens would like to get a chance to put a
13 proposition on the state ballot for maybe that we
14 could vote for the members of the CEC, so that
15 this could be truly a democratic process.

16 Thank you.

17 (Applause.)

18 HEARING OFFICER VALKOSKY: Thank you.

19 MR. GARBETT: I'm William Garbett. I
20 did not speak on behalf of the public, an
21 intervenor tonight, but I am William Garbett,
22 private citizen, wondering about the time
23 scheduling.

24 What happens is what the Commission is
25 considering tonight is the Commission's

1 scheduling, or the applicant's scheduling, or the
2 staff's scheduling.

3 But then, again, I always thought that
4 intervenors were a party to the proceeding, and
5 should also have a proposed schedule that could be
6 compared, as well.

7 Thank you.

8 HEARING OFFICER VALKOSKY: Thank you.

9 (Applause.)

10 MR. AJLOUNY: I waited to go last. Issa
11 Ajlouny, A-j-l-o-u-n-y.

12 PRESIDING MEMBER LAURIE: Sir, you've
13 spoken, take one minute, please.

14 MR. AJLOUNY: Okay, well, I'm here to
15 just talk about the schedule. And I just want --

16 PRESIDING MEMBER LAURIE: Do it in one
17 minute.

18 MR. AJLOUNY: Okay. What I'm here to
19 say is the schedule wasn't expanded, if the
20 applicant says I want to expand the schedule, does
21 the Commissioners have a right to say, deny the
22 extension of the schedule?

23 PRESIDING MEMBER LAURIE: The Committee
24 has discretion --

25 MR. AJLOUNY: So, okay, so because the

1 lack of response by the applicants and because of
2 all the problems in this area, and now they're on
3 their third design, I personally would like no
4 extension on this.

5 If that's going to cause, from what I
6 understand, that there's no way that this will be
7 approved, that you make sure that you're going to
8 have to vote on it in June, that there's no way
9 that this can be approved, because the target
10 still hasn't settled down.

11 If that's the case, I would like not to
12 be extended.

13 And the fact that I am looking for the
14 straightest and shortest time to blow this power
15 plant out of this area and get it somewhere else.

16 So, if that's going to work, you know,
17 I'm for that.

18 PRESIDING MEMBER LAURIE: Thank you.

19 (Applause.)

20 PRESIDING MEMBER LAURIE: Anybody else?

21 Ladies and gentlemen, we appreciate your
22 attendance. The meeting is adjourned.

23 SPEAKER: I have a question before you
24 adjourn.

25 PRESIDING MEMBER LAURIE: No, the

1 meeting is adjourned.

2 (Whereupon, at 9:45 p.m., the hearing
3 was adjourned.)

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CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Hearing, nor in any way interested in the outcome of said Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, 1999.

DEBI BAKER

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